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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 684

J. P. STEVENS & CO., INC., *Petitioner*

vs.

NATIONAL LABOR RELATIONS BOARD

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays the Court for a Writ of Certiorari directed to the United States Court of Appeals for the Second Circuit, to the end that this Court may review a Decision which that Court has rendered in a case involving

the parties above-named. And the Petitioner respectfully shows to this Court:

THE OPINIONS OF THE COURT AND OF THE ADMINISTRATIVE AGENCY BELOW

The Opinion of the United States Court of Appeals for the Second Circuit has not yet been printed in the official reports, but may be found in the following unofficial reports:—65 LRRM 2829 (1967) and 56 Labor Cases ¶12,054 (1967). The Opinion is also printed, along with the Decree of the Court, in the Appendix to this Petition.

The case came to the Court of Appeals for the Second Circuit upon Petitions for Review of a Decision and Order of the National Labor Relations Board. The Decision and Order of the Board, 157 NLRB No. 90 (1966), is also printed in the Appendix to this Petition.

JURISDICTION OF THIS COURT

The Opinion of the Court below was handed down on July 7, 1967. The judgment or decree of that Court is dated September 1, 1967, and was entered by that Court on that date.

Jurisdiction to review the decree of the lower Court is conferred on this Court by the provisions of 28 U.S.C. §1254.

QUESTIONS PRESENTED FOR REVIEW

This case embodies a number of rulings and directives by the National Labor Relations Board, which are extraordinary and extreme in nature. The salient questions

raised by these rulings and directives may be stated as follows:

(1) Is it within the prerogative of the Labor Board to compel an employer to assemble his employees and read to them a public confession of guilt in words and terms dictated by the Labor Board?

(2) In lieu thereof, may the Board send an emissary into the employer's Plants to read such declaration to the assembled employees in the employer's stead?

(3) Is it within the prerogative of the Board to compel a three-fold communication of such declaration to the employees, that is, by reading it to them, by posting it in front of them, and by mailing it into their homes?

(4) May the Board require the employer to post and to mail this declaration to the employees in Plants and at locations which have never been involved, nor mentioned, in any of the Board proceedings in any way whatever?

(5) May the Board prohibit the employer from expressing to his employees his "sincere belief" that the Union would not work out to their "benefit," but "in the long run would itself operate" to their "serious harm"?

(6) When the Board conducts lengthy hearings at various locations on a great variety of factual issues, and 443 witnesses testify, the majority of them for the employer, but never upon conflict of testimony on any material question of fact—not once on any such conflict does the Board find any witness for the employer to be telling the truth or any witness for the Union or the Board to be telling anything but the truth—in such situation is it possible,

upon any reasonable view, to consider that the employer has had a fair trial?

(7) In proceedings before the Board, relative to the discharge of employees, when there is no evidence that the employees would not have been discharged had they been unconnected with any Union—and when the employer affirmatively shows reasonable, and often undisputed, cause for their discharge, and asserts that under the circumstances the employees would have been discharged whether connected with any Union or not—is the Board to be sustained in ruling that nevertheless the discharges were unlawful?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Portions of the Constitution of the United States and of the National Labor Relations Act pertinent to this case are as follows:

> "Congress shall make no law . . . abridging the freedom of speech . . ."
>
> First Amendment to the Constitution of the United States

> "No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."
>
> Fifth Amendment to the Constitution of the United States

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evi-

dence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit."

29 U.S.C. §158(c)

"No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause." 29 U.S.C. §160(c)

STATEMENT OF THE CASE

This case arises out of proceedings brought by the National Labor Relations Board against J. P. Stevens & Co., Inc., now Petitioner before this Court.

This Company owns and operates textile plants in a number of States from New England southward, principally, however, in the States of North Carolina and South Carolina. There are 43 such Plants in these two States, employing some 28,000 people.

The Labor Board, in its proceedings, ruled that unfair labor practices had occurred in 19 of these 43 Plants during the approximate period mid-1963 to mid-1964. The holding of the Board was that the Company, in such Plants, had wrongfully discharged employees in violation of Section 8(a)(3) and (4) of the National Labor Relations Act and had otherwise, at these Plants, interfered with employee rights in violation of Section 8(a)(1) of the Act (Appendix,[1] p. 3a).

In making such ruling, the Board adopted pro forma, and with only minor variations, the findings and conclu-

[1]The Appendix to this Petition.

sions of its Trial Examiner (Appendix, p. 40a). But as to "remedies," the Board improvised a number of directives which it described as not "conventional" (Appendix, p. 22a, J. A.[1] 18). The Court below refers to them as "unusual" (Appendix, p. 3a).

These novel remedies had not been requested by any party to the case at any time. They had not been recommended or suggested by the Board's Trial Examiner. Prior to ordering them, the Board did not give any notice or hold any hearing, or invite any discussion or argument, on any question as to whether these remedies, or any like them, would be appropriate or should be considered in this case or in any case.

Upon the issuance of the Board's Decision and Order, the Company, as authorized by 29 U.S.C. §160(f), promptly filed a Petition for Review in the United States Court of Appeals for the Fourth Circuit—the Plants involved being located within that Circuit, and the unfair labor practices having been alleged to have occurred there, and all the Labor Board hearings and proceedings having been conducted there.

At the same time, the Textile Workers Union of America, AFL-CIO, which had initiated the charges against the Company before the Labor Board, filed a Petition for Review in the United States Court of Appeals for the Second Circuit, upon a claim of aggrievment that the Board failed to find the Company guilty of each and every wrong alleged in the Complaints.

After transfer proceedings, the review of the Board's Decision and Order was undertaken, over the Company's

[1] "J. A." refers to the printed Joint Appendix filed by all parties with the United States Court of Appeals for the Second Circuit, a copy of which is now on file with this Court.

protest, in the Court of Appeals for the Second Circuit. Later, in deciding the case, the Second Circuit Court expressed "doubt" as to "whether it would not have made better sense" for the case "to have been heard" by the Court of Appeals for the Fourth Circuit (Appendix, p. 20a).

The Court went on, however, to rule that the Decision of the Board should be sustained and that it would enforce the Board's Order "with minor modifications" (Appendix, p. 3a).

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

This case presents a clear and revealing picture of the Labor Board in the process of extending and expanding its own powers.

Steadily favored by the two concepts that its "fact-finding" is virtually conclusive and that the shaping of "remedies" is essentially within its sole discretion—the Board has reached a position from which it can now view its horizons as almost limitless.

Moving ingeniously and persistently, the Board has largely freed itself from the restraints which Congress carefully sought to place upon it, in the amendments to the National Labor Relations Act, twenty years ago. The strong admonition of this Court that "reviewing Courts" have a positive "responsibility" to see to it that "the Board keeps within reasonable grounds"[1] have by now been substantially swept away.

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[1] *Universal Camera Corporation vs. National Labor Relations Board,* 340 U. S. 474, 490, 71 S. Ct. 456, 95 L. Ed 456, 468.

The prospect is that the Board will range ever more widely, overturning established principles and limitations of law, one after another—unless this Court sees fit to intervene.

Although this has been the overwhelming and undeniable trend, there has been, and there is, reluctance and dissent among the Courts. Thus, for example, two United States Courts of Appeal are in specific disagreement with the Court below in respect to the requirement of assembling employees and reading to them a declaration prescribed by the Labor Board. These are the United States Court of Appeals for the Fifth Circuit and the United States Court of Appeals for the District of Columbia.[1] The latter Court expressly considered and expressly disapproved the ruling on this matter by the Court below in the present case.

There can be no doubt but that this is an issue of far-reaching importance in the ever-continuing struggle to maintain the defenses of individual freedom and to protect the liberty promised by the First and Fifth Amendments to the Constitution of the United States against the encroaching hand of government.

Not only is this an issue on which the Courts of Appeal are divided, it is also a controversy which, until and unless it is put at rest by this Court, will persist. For the Board is

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[1] *National Labor Relations Board vs. Laney & Duke Storage Warehouse Co.*, 369 F. 2d 859 (5th Cir., 1966); *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 66 LRRM 2081 (D. C. Cir., 1967).

steadily and repeatedly increasing its issuance of orders directing the assembling of employees and the reading to them of such forced confessions and recantations. A recent and typical example of an employer's confession to employees, as decreed by the Board, reads as follows:

> "We violated the law when we had you vote on the Union. We will not do this again . . . We will not fire anyone over the Union again."[1]

It has become obvious that the Board will continue to issue such edicts unless this Court raises a restraining hand.

It is, indeed, an openly avowed policy of the Board that even within a Circuit where a United States Court of Appeals has invalidated an Order of the Board, the Board will, if it so chooses, continue to issue the same order in all similar cases—even though it has not sought in this Court any review of such adverse Court of Appeals decision.[2]

On another of the questions presented by this case, there is likewise a direct conflict among the United States Courts of Appeal. There are at least seven Court of Appeals decisions upholding the employer's expressing of his view of the Union to his employees, in the same language which the Board and the Court below have condemned in the present case.

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[1] *Harry F. Berggren & Sons, Inc.*, 165 NLRB No. 52 (1967).

[2] "It has been the Board's consistent policy for itself to determine whether to acquiesce in the contrary views of a Circuit Court of Appeals." *Insurance Agents' International Union, AFL-CIO*, 119 NLRB 768, 773, 41 LRRM 1176 (1957); *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616, 54 LRRM 1109 (1963).

On this subject, the present case raises the question as to whether the Board is here depriving the employer of his fundamental right of free speech, under the First Amendment to the Constitution of the United States—and further question as to whether the Board is, at the same time, disobeying the express mandate of its own statutory charter, as set forth in Section 8(c) of that Act. On both such questions, there are, as stated above, seven decisions by United States Courts of Appeals in conflict with the decision of the Court below in this case.

None of these issues, which have been outlined and which are now precisely focused in this case, has been considered or passed upon by this Court. Division and divergence, with respect to them, will inevitably increase and proliferate, until they have been resolved by this Court.

Still further, as to the questions presented in this case, there can be no doubt but that all of them are questions of gravity and of wide importance in the settling of national labor policy and in the interpretation and administration of the National Labor Relations Act.

For these reasons, hereinafter amplified, the Petitioner earnestly submits that this is a case meriting the attention and the judgment of this Court.

ARGUMENT AMPLIFYING REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

I.

The "Unusual" Directives Of The Labor Board In This Case

A. The Requirement With Respect To The Reading Of The Employer's Declaration And Confession To Employees

Before reviewing for this Court the substantive rulings of the Labor Board and the Court below, the Petitioner would respectfully bring to the Court's attention some considerations bearing upon the novel "remedies" which have been put forward in this case.

The most striking of these new directives is the requirement that, in the Plants as to which unfair labor practice rulings have been made, the Company shall "convene during working time, by departments and by shifts, all its employees" and shall "read to them" a declaration as prescribed and worded by the Board (Appendix, p. 20, 25).

This declaration is essentially a confession of guilt. There is no doubt but that the impression of any audience would be that the employer is being forced to confess that he has broken the law and is being required to declare that he will not do so again. And that, indeed, is the true nature of the situation. For the statement prescribed in this case speaks repeatedly of this Company's "discrimination" against employees in terminating them and of its "discriminatorily" withholding work from them (Appendix, p. 31a, 65a, 66a).

The statement discussed in this case is lengthy. A short and terse confession, such as has been hereinabove referred to, simply reveals more quickly the nature of the performance:

> "We violated the law when we had you vote on the Union. We will not do this again . . . We will not fire anyone over the Union again."[1]

Let us picture a situation in which an official of the Stevens Company is standing in front of assembled employees, reading the required statement to them. There is no evading or avoiding the fact that as the Company's official reads the Company's signed statement, referring to the Company's discriminations, *declaration and confession is being made that the Company has discriminated —and that the Company has thereby violated the law— and is guilty.*

This is an astounding edict for an agency of our Government to hand down. In this land *no* citizen may be compelled to confess guilt or declare himself a violator of the law—or so it has been until now.

This Court has been at great pains of late to see to it that no one is unduly influenced to confess guilt. *Miranda vs. Arizona,* 384 U. S. 436; *Escobedo vs. Illinois,* 378 U. S. 478. Yet here an arm of the Federal Government orders it, and directs that it be done before assemblages of fellow citizens.

Even the convicted felon can never be compelled to confess that he has violated the law, and he can always and

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[1] *Harry F. Berggren & Sons, Inc.,* 165 NLRB No. 52 (1967).

forever deny guilt and, indeed, at every opportunity proclaim that he has been unjustly convicted. Why are the rights of the employer in labor matters less?

As Judge Learned Hand, speaking exactly to this subject, said so clearly:

> "Forcibly to compel anyone to declare that the utterances of any official, whoever he may be, are true, when he protests that he does not believe them, has implications which we should hesitate to believe Congress could ever have intended . . . [T]oo long a history, and too dearly bought privileges, are behind such refusals . . . [W]e can very well understand the sense of outrage which anyone may feel at being forced publicly to declare that he has committed even a minor dereliction of which in his heart he does not believe himself guilty."
>
> *Art Metals Construction Co. vs. National Labor Relations Board,* 110 F. 2d 148, 151 (2nd Cir., 1940)

The Court below remarked that the statement required by the Board in the instant case "does not contain" language, such as was present in the case last quoted, by which the Company would declare that it will "cease and desist" from unlawful actions (Appendix, p. 25a). The Court, however, disregarded the fact that the statement here prescribed, as hereinabove pointed out, does refer repeatedly to "discrimination"—violative of the law—on the part of the Company, and to actions, "discriminatorily," and therefore wrongfully and unlawfully, engaged in by the Company.

". . . [W]e cannot believe that it was the intention of Congress to countenance an administrative order the effect of which is to require from one who denies that he has violated the law a confession that he has violated it. Such a notice as has been approved by this Court accomplishes the same result as the one ordered by the Board and avoids the unnecessary humiliation involved in an order which in effect requires the employer to confess publicly a violation of the law which he denies, and has the right to deny, even though he may have been found guilty of the violation."

Hartsell Mills Co. vs. National Labor Relations Board, 111 F. 2d 291, 293 (4th Cir., 1940)

The lower Court said that it regarded the matter "somewhat less emotionally" (Appendix, p. 25a). It is respectfully submitted that the Court has not sufficiently studied the annals of human struggle nor plumbed the true depth of the feeling and resolution of men against coerced utterances.

It is indeed a grievous mistake to deem the forcing of public confession a small matter, which might pass unnoticed. In such manner are fundamental rights eroded—and freedom gradually, yet wholly, lost.

The principle involved is not trivial in any sense. During centuries past, countless thousands suffered oppression and

death rather than confess they had committed wrong when they deeply and devoutly believed that they had not.

He who cannot see in the newly devised directives of the Labor Board in this case an ominous trend—whether so intended or not—backwards towards the same oppressions, is one who will not learn from the lessons of history and of human experience.

> ". . . [I]llegitimate and unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."
>
> *Boyd vs. United States*, 116 U. S. 616, 635, 6 S. Ct. 524, 29 L. Ed 746, 752

Justice Brandeis, dissenting in *Olmstead vs. United States*, refers to *Boyd vs. United States*, from which the foregoing language is quoted, as "a case that will be remembered as long as civil liberty lives in the United States," and goes on himself to observe that:

> "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroach-

ment by men of zeal, well-meaning, but without understanding." *Olmstead vs. United States,* 277 U. S. 438, 479, 48 S. Ct. 564, 72 L. Ed 944, 957 (Dissent by Justice Brandeis)

And the eloquent admonition of Justice Sutherland, dissenting in *Associated Press vs. National Labor Relations Board,* has true application indeed to the situation now before this Court:—"Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties" desire to preserve them, he asked.

> "If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."
>
> *Associated Press vs. National Labor Relations Board,* 301 U. S. 103, 141, 57 S. Ct. 650, 81 L. Ed 953, 965

What "liberty," under the Fifth Amendment to the Constitution of the United States, does a citizen have—what "freedom of speech," under the First Amendment, does he have—when he is forced by his own Government to stand in public and declare as true that which he does not believe to be true—a declaration indeed of his own guilt? For him the centuries have rolled back and his constitutional liberty and freedom of speech have indeed "vanished," as if they were concepts yet undreamed.

As has been hereinbefore noted, two United States Courts of Appeal are in direct disagreement with the Court

below on this matter. Not long before the decision in this case, there came before the Court of Appeals for the Fifth Circuit a case in which the Labor Board had issued a "remedy" directive, which ordered the employer to read a notice "to each employee, singly or collectively." It does not appear that the notice in that case involved any confession of violation of the law—as does the notice in the present case. Nevertheless, the Court in that case struck down the "reading" requirement.

> "The requirement of the Recommended Order that the Notice be read by management to any employee who requests it, as amended by the Board to require it be read to each employee, singly or collectively, is unnecessarily embarrassing and humiliating to management rather than effectuating the policies of the Act".
>
> *National Labor Relations Board vs. Laney & Duke Storage Warehouse Co.*, 369 F. 2d 859, 869 (5th Cir., 1966)

Since the decision in the present case, the same issue has reached the United States Court of Appeals for the District of Columbia, in the case of *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 66 LRRM 2081 (D. C. Cir., 1967). In that case, decided as recently as September 6, 1967, the District of Columbia Court of Appeals took specific note of the decision by the Second Circuit Court in the present case, but nevertheless declared:

> "The ignominy of a forced public reading and a 'confession of sins' by any employer, any employee, or any

Union representative makes such a remedy incompatible with the democratic principles of the dignity of man".

International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc., 66 LRRM 2081 (D. C. Cir., 1967)

It is submitted, however, that beyond "democratic principles," there is here involved the ultimate principle of individual liberty and freedom—"the cherished rights of mind and spirit"[1]—guaranteed to every citizen by a written Constitution—against the encroachment of any and all power, including that of Government itself.

It is to be observed that in deciding the present case, the Court below gave the Company "the alternative" or "option of having the notice read by Board representatives, rather than by its own officials" (Appendix. p. 26a). If, however, the employer must assemble his employees and open his premises to an agent of the Labor Board, who stands and reads the employer's confession for him, the true nature of the situation is not altered or disguised. The forced declaration of the employer is simply being spoken for him by a forced agent.

Certainly, also, on such a stage, the Government is being cast in an entirely new and most unflattering role—as its delegate solemnly parrots in public view the involun-

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[1]*Malloy vs. Hogan*, 378 U. S. 1, 5, 84 S. Ct. 1489, 12 L. Ed 2d 653, 657.

tary confession of an American citizen. It may safely be said that such a scene has not been enacted in this land since the founding of this Republic.

The Court of Appeals for the District of Columbia specifically considered this "alternative", as put forward by the Court below, and unhesitatingly rejected it.

"This procedure, however, creates a problem more severe than the one it supposedly solves.

. . .

"Board involvement in a reading of the order would inescapably draw the Board into the very conflict areas it should remain aloof from, except for the need to judge". *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 66 LRRM 2081 (D. C. Cir., 1967)

The Court below says that it should not disapprove Board orders merely because they are "imaginative", and the Court refers to suggestions on "the need for creative orders" in the administration of the National Labor Relations Act (Appendix, p. 23a).

But surely it will be recognized that a trend toward "imaginative" and "creative" orders is the road to government by men and not by law—and a throw-back toward bygone oppressions, which the founders of this Nation sought to prevent forever.

If it be answered that the Labor Board is merely trying to institute a more effective "remedy" for a wrong, it

becomes necessary to remember the admonition that "unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure"[1]—and the clear warning by Judge Brandeis that:—"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent . . . [T]he greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding"[2].

B. The Requirement That The Employer's Declaration And Confession Shall Be Thrice Communicated To Employees, And That It Shall Also Be Communicated To Employees At Plants And Locations Not Involved In This Case

Turning to the further "remedy" directives here at issue, the Board, with the support of the Court below, orders not only the reading of the Company's statement to the employees, but also orders that the Company shall post signed copies of it on Plant bulletin boards and likewise mail signed copies into the homes of the employees (Appendix, p. 24a).

Apart from, and in addition to, the elements of compulsion and of forced confession described above, the question naturally arises:—Why such triplicate "communication". If, for example, the declaration has been placed on the Plant bulletin boards, where the employee

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[1] *Boyd vs. United States*, supra.

[2] *Olmstead vs. United States*, supra.

regularly reads notices, does he need—and does he desire—receiving exactly the same statement at his home? And is he not surfeited indeed with this "communication" when he returns to the Plant and is taken off his job and read the same declaration again? It would seem that he is being somewhat over-notified.

It would appear that the Board's true purpose is not so much notification or communication, as it is the placing of the Company in as many postures of obeisance as the Board can devise.

Next, the Board, and the Court below, order that the Company's declaration be posted and mailed to employees, not only at the Plants where unfair labor practices were found to have occurred, but also in all the Company's 43 Plants in North Carolina and South Carolina, and to all the Company's 28,000 employees throughout those States.

In support of this the Court says that "the Board has found that the Company's practices were 'so extensive and so well-publicized that they must inevitably have had a coercive impact'" at all the other Plants of the Company in these States, and that posting and mailing at all Plants and to all employees in North Carolina and South Carolina "is therefore needed to remedy the coercive atmosphere" (Appendix, p. 24a).

As to this pronouncement, it must be respectfully pointed out that there is not in the record any shred of evidence to support it—and the Company emphatically called this to the attention of the Court below.

There is no evidence that the Company's allegedly wrongful actions were "well publicized" or indeed "publicized" at all. There is no evidence that there has been at any time, or in any way, any "coercive impact" or influence or effect whatever upon any employees in any of the Company's other Plants in North Carolina and South Carolina[1].

The "coercive atmosphere" referred to as existing in other Plants and among employees elsewhere is a matter of rhetoric, not of record. There is not a syllable nor a scintilla of evidence as to "atmosphere" or attitude or other conditions of employees in any other Plants of the Company beyond those involved in this case[2].

Thus is to be seen the error and injustice which can so quickly spring from "imaginative" and "creative" orders

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[1]The Court mentions a statement by the Company, hereinafter described, on the subject of the Union, which was posted in some of the Plants and in some instances mailed to employees (Appendix, p. 24a). This reference is, however, completely adverse to the argument that posting and mailing should be now extended beyond the Plants involved in this case—for this Company statement was issued only in such Plants, and was confined to them, that is, the Plants involved in this case.

[2]In speaking of the existence of a "coercive atmosphere", it would seem that some attention should be paid to the undeniable fact that during the course of the Union's organizing efforts among the Respondent's employees—at the specific requests of the Union and at times and places chosen by the Union—the Board has conducted elections in 8 of the Respondent's Plants, and in every instance the employees have voted, *by secret ballot* in such Labor Board elections, decisively against the Union—and that in one Plant, the Respondent's largest, the Board conducted a re-run election, holding it at the Union's insistence away from the Plant, and yet the employees went to the polling place and voted the Union down by a majority more than twice as large as before.

of administrators—orders which may be derived, as in this instance, from divination or assumption—rather than from anything in the record.

"Notwithstanding that there was no charge of unfair labor practices as to three of the plants, and that the charge was dismissed as to one, this order requires that notices be posted in all of them. In support of this provision, the Board argues that the unfair labor practices were system-wide, centrally directed and coordinated and, therefore, the order should apply to all plants. It cites in support of its position *N. L. R. B. vs. Express Publishing Co.*, 312 U. S. 426, 438, 61 S. Ct. 693, 85 L. Ed 930. In our judgment, there is nothing in this case which supports the Board's position. On the other hand, in *N. L. R. B. vs. Ford Motor Co.*, 5 Cir., 119 F. 2d 326, the court expressly held against the Board's contention in a similar situation. The court found the Board was without jurisdiction to make an order broader than the subject matter of the complaint. We agree with this conclusion. Furthermore, we think that petitioner, if it, at some future time, should be charged with an unfair labor practice at a plant or plants not included in the instant proceeding, would be entitled to a hearing before the Board, rather than this court in a contempt proceeding". *Reliance Manufacturing Co. vs. National Labor Relations Board*, 125 F. 2d 311, 321-322 (7th Cir., 1941)

"Respondent company contends that there was no substantial evidence that it had followed any unlawful

hiring practices at any projects other than Paducah; and with this contention, we agree.

. . .

"In accordance with the foregoing, the order of the Board is modified by deleting the requirement that respondent company post the copies of the notice required by the Board, at places or projects other than the project at Paducah, Kentucky".

National Labor Relations Board vs. F. H. McGraw & Co., 206 F. 2d 635, 641 (6th Cir., 1953)

To the same effect are the decisions in:

Shell Oil Co. vs. National Labor Relations Board, 196 F. 2d 637 (5th Cir., 1952).

National Labor Relations Board vs. Thompson Ramo Wooldridge, Inc., 305 F. 2d 807, 811 (7th Cir., 1962).

On the whole subject of remedies, the Labor Board deems that it has a very wide latitude, "to tailor"[1] and devise orders which will "effectuate the policies of the Act," and that in this it has developed a superior talent and discernment, which is generally acclaimed as administrative "expertise".

The first and fundamental caveat with respect to this proposition is that if accepted at face value, it would mean that the power of the Board is virtually limitless. For, as becomes apparent in the present case, there is practically nothing that the Board might not require of an employer in the guise of "tailoring a remedy".

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[1] *H. W. Elson Bottling Co.*, 155 NLRB 714, 60 LRRM 1381 (1965).

It is vital to note that the National Labor Relations Act does not itself give any presumptive validity whatever to "remedy" devising by the Board—as it expressly does give, on the other hand, to the "findings of the Board with respect to questions of fact as supported by substantial evidence on the record considered as a whole", 29 U.S.C. 160(e).

So far as the provisions of the Act are concerned, "remedy" directives are left unqualifiedly within the judgment of the Courts. In contrast to fact-findings by the Board, the Statute leaves the Courts completely free to analyze, appraise and balance remedy orders according to the Court's own wisdom and discretion—"enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board" entirely as they, the Courts, may see fit, 29 U.S.C. 160(e).

This consideration is of particular force where, as here, the remedy directives are innovations and, as the Board itself recognizes, beyond "the conventional" (Appendix, p. 2799). Indeed, if the arguments and considerations set forth herein are of any value whatever, this Court is in a better position to evaluate and judge the new "remedies" than the Board, for, as has been hereinabove pointed out, this Petitioner has never at any time presented—nor been afforded any occasion to present—these arguments and considerations to the Board.

Moreover, the real truth is that the Labor Board has no more "expertise" for appraising these remedies, against the background of the law and the sound rights and interests of all the parties, than do the Courts—nor indeed

as much—sophisticated phraseology, in behalf of the Board, to the contrary notwithstanding.

It is respectfully submitted that reviewing Courts should not be too ready to relax their scrutiny, and too willing to agree that the judicial function is largely preempted, when someone, on behalf of the Board, raises the magic talisman of "expertise" or intones a solemn incantation about "tailoring a remedy".

> "Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds".
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> *Universal Camera Corporation vs. National Labor Relations Board,* 340 U. S. 474, 490, 71 S. Ct. 456, 95 L. Ed 456, 468

> "The deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress".
>
> *American Ship Building Co. vs. National Labor Relations Board,* 380 U. S. 300, 318, 85 S. Ct. 955, 13 L. Ed 2d 855, 867

> ". . . '[U]nless we make the requirements for administrative action strict and demanding, *expertise* . . . can become a monster which rules with no practical limits on its discretion' . . . 'Congress did not purport

to transfer its legislative power to the unbounded discretion of the regulatory body' ".

Burlington Truck Lines, Inc. vs. United States, 371 U. S. 156, 167, 83 S. Ct. 239, 9 L. Ed 2d 207, 215

"We have said that 'this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices even though the Board be of the opinion that the policies of the Act might be effectuated by such an order'. We have said that the power to command affirmative action is remedial, not punitive.

. . .

"In that view, it is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. That argument proves too much, for if such a deterrent effect is sufficient to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end".

Republic Steel Corp. vs. National Labor Relations Board, 311 U. S. 7, 11-12, 61 S. Ct. 77, 85 L. Ed 6, 10, quoting *Consolidated Edison Co. vs. National Labor Relations Board,* 305 U. S. 197, 235-236, 59 S. Ct. 206, 83 L. Ed 126, 143-144

"This is not to say that the Board may apply a remedy it has worked out on the basis of its experience,

without regard to circumstances which may make its application to a particular situation oppressive and therefore not calculated to effectuate a policy of the Act".

National Labor Relations Board vs. Seven-Up Bottling Co., 344 U. S. 344, 349, 73 S. Ct. 287, 97 L. Ed 377, 383

"Nothing in the statute, nothing in any of the decisions lends countenance to the view that Congress intended to make of the Circuit Courts of Appeals mere rubber stamps, mere perfunctory executors of the Board's unrestrained will. They make the contrary quite clear. It is, therefore, for this court, in the performance of its function under the statute, to say not blindly but in the exercise of an informed discretion, first, whether the findings are supported by the evidence, and, second, whether the Board's orders are *appropriate* under the statute".

National Labor Relations Board vs. Ford Motor Co., 119 F. 2d 326, 330 (5th Cir., 1941)

"The Supreme Court has made it clear that national labor policy is for the Congress and not the Board to determine".

Armco Steel Company vs. National Labor Relations Board, 344 F. 2d 621, 625 (6th Cir., 1965)

"The powers conferred upon this court by the National Labor Relations Act to enforce the orders of the Board are equitable in nature and may be invoked only

if the relief sought is consistent with the principles of equity". *National Labor Relations Board vs. National Biscuit Co.*, 185 F. 2d 123, 124 (3rd Cir., 1950)

"Furthermore, we are convinced that this is not a case in which administrative expertise is of compelling weight . . . [H]e is no friend of administrative law who thinks that the Commission should be left at large". *National Labor Relations Board vs. Kingston Cake Co.*, 206 F. 2d 604, 611 (3rd Cir., 1953)

The Petitioner respectfully urges that this is a case which justly calls for the attention of this Court. The "remedy" decrees which have been issued in this case by the Labor Board, and upheld by the Court below, definitely have in them the seeds—if not yet the full flower—of government controlled more and more by the will of man rather than by the rule of law.

II.

The "Findings" And Conclusions Of The Labor Board In This Case

A. The Employer's Expression Of Opinion With Respect To The Union, And The Board's Ruling Thereon

In the present case the Board ruled, and the Court below agreed, that a statement regarding the Union, made by the Company in the Plants where the Union was con-

ducting an organizing campaign, was unlawful (Appendix, p. 19a-21a). The pertinent portion of that statement read as follows:

"To All Employees

Since the Union is putting on a campaign to get in here, a good many questions have arisen with regard to the following matters. We have decided to state the Company's position on these subjects as clearly as we can for everybody alike:

(1)*This matter is, of course, one of concern to the Company. It is also, however, a matter of serious concern to you and our sincere belief is that if this Union were to get in here, it would not work to your benefit but, in the long run, would itself operate to your serious harm.*

. . . ."

The attack, and the ruling of illegality, center upon the words:—"[O]ur sincere belief is that if this Union were to get in here, it would not work to your benefit but, in the long run, would itself operate to your serious harm."

It is to be noted that any possible implication that the Company would visit "harm" upon employees if the Union came in, is specifically and studiously guarded against. The belief voiced is that the Union "would itself operate" to the employees' "harm."

Surely it will not be argued that an employer cannot sincerely believe—or should not be allowed to believe—or in any event should not be allowed to express to his employees a belief—that the intervention of a Union would "in the long run" not work out to their best interests. Cer-

tainly it is possible for an employer "sincerely" to entertain such a "belief." Is it now to be unlawful for him to say so?

Seven times prior to the present case, this same expressing and phrasing of opinion has been considered by United States Courts of Appeal in four different Circuits. In each and every instance, as hereinabove pointed out, the Courts of Appeals have held that under the Constitution of the United States and under the express provisions of the National Labor Relations Act itself, the employer is not to be condemned for making such a statement to his employees. The Court below is the first and only Court to rule otherwise.

"Nothing in this wording do we find to exceed the bounds of section 8(c) granting an employer the right to express and disseminate its views on unionization."

National Labor Relations Board vs. Lyman Printing Co., Inc., 356 F. 2d 844, 846 (4th Cir., 1966)

"We are of the opinion that the posting of the notice to all employees on the bulletin boards was protected by Section 8(c) of the Act and did not constitute an unfair labor practice under Section 8(a)(1) thereof."

Suprenant Manufacturing Company vs. National Labor Relations Board, 341 F. 2d 756, 760 (6th Cir., 1965)

"This respondent seeks to leave no one in doubt of its opposition to unionization of its plant. This it has a

right to do, so long as it does so in a fair presentation of its views." *National Labor Relations Board vs. Southwire Company*, 352 F. 2d 346, 348 (5th Cir., 1965)

"It is apparent that Koppen did voice opposition to the union and the intention to use every *proper* means to prevent it from coming into the Plant.

. . .

"Certainly the Act does not require that the Company favor the Union or that it refrain from opposing the Union, nor does it prohibit the Company from express- to prevent it from coming into the Plant.

. . .

"Koppen's speech did not contain any discernible threat of reprisal or force, or promise of benefit, relating to protected union activities. What he said appears to be unqualifiedly privileged under the provisions of section 8(c) of the Act."

National Labor Relations Board vs. Threads, Incorporated, 308 F. 2d 1, 8, 9 (4th Cir., 1962)

"But we cannot uphold the Board's ruling that the notice violates the Act. Another panel of this court has recently considered the innuendoes that could fairly be drawn from a nearly identical notice. *Amalgamated Clothing Workers vs. NLRB (Sagamore Shirt Co.)* . . . It concluded that the language used 'in and of itself can-

not reasonably be construed as a "threat of reprisal or force" as required by the Act.' We agree."

Truck Drivers and Helpers Local No. 728 vs. National Labor Relations Board, 364 F. 2d 682, 684 (D. C. Cir., 1966)

"We are of the opinion that this finding and conclusion of the Board was in error. The statement by Calhoun was manifestly no more than a pronouncement of his opinion and contains no discernible threat of reprisal. We held in *N. L. R. B. vs. Threads, Incorporated,* 308 F. 2d 1 (4 Cir. 1962), that a substantially similar statement by an employer to his assembled employees was unqualifiedly privileged under the provisions of section 8(c) of the Act . . ."

Wellington Mill Division, West Point Mfg. Co. vs. National Labor Relations Board, 330 F. 2d 579, 583 (4th Cir., 1964); cert. den. 379 U. S. 882, 85 S. Ct. 144, 13 L. Ed 2d 88 (1964)

Such was also the ruling in the case of *Amalgamated Clothing Workers of America, AFL-CIO vs. National Labor Relations Board,* 365 F. 2d 898 (D. C. Cir., 1966). To the same effect are the decisions in *Union Carbide Corporation vs. National Labor Relations Board,* 310 F. 2d 844 (6th Cir., 1962), *Texas Industries, Inc. vs. National Labor Relations Board,* 336 F. 2d 128, 130 (5th Cir., 1964), and *J. S. Dillon & Sons Stores Co. vs. National Labor Relations Board,* 338 F. 2d 395, 400 (10th Cir., 1964).

The Court below says,[1] however, that the " 'particular setting' in this case" gives "sufficiently dark a hue" to the Company's statement that it must be pronounced illegal. Presumably the "setting" the Court refers to consists of the other unfair labor practices found against the Company in this case.

But in all the cases referred to above, save only the case of *National Labor Relations Board vs. Lyman Printing Co., Inc.*, such "settings" of other unfair labor practices existed, that is, findings of unlawful practices were being affirmed by the reviewing Courts, at the same time that the same Courts were upholding the right of the employers involved to express to employees the same opinion and belief which this Company is now condemned for expressing.

Moreover, the words of the Statute are sufficiently explicit and positive that they are not to be undone by a "setting." They read as follows:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.
>
> 29 U. S. C. §158(c)

It is difficult to see how Congress could have expressed self more precisely, more pointedly or more emphatically.

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[1]Adopting a dictum from the case of *Amalgamated Clothing Workers of America, AFL-CIO vs. National Labor Relations Board*, 365 F. 2d 898 (D. C. Cir., 1966).

The phrase "if such expression contains" is to be particularly noted. Thus, unlawful meaning or implication must be contained in the expression itself. It may not be imported and infused from other acts or events. If coercion cannot be derived from the content of the statement itself, then its utterance is not a violation of the law—no matter what other violations of law may be found.

Section 8(c) does not conclude with any provision to the effect "this Subsection shall not be applicable" in a situation where the person accused is found guilty of sufficiently serious and accompanying unfair labor practices. But the Board and the Court below add exactly such a provision to the Statute. There is no avoiding the fact that their decision on this matter necessarily constitutes such a "reading"—or rewriting—of the Statute. And such a rewriting obviously and in major degree undoes what Congress wrote.

B. The Evidence Relating To The Discharge Of Employees, And The Board's Treatment Of Such Evidence

The findings of the Labor Board relate mainly to the allegations of wrongful discharge of employees. The holding of the Board, accepted and endorsed by the Court below, is that, during a period of approximately a year, 71 employees were wrongfully discharged at 19 Plants, which are involved in this case.

Repeatedly, the Board and the Court refer to these discharges as "massive" wrongdoing on the part of the Company — the implication being that this number of terminations is itself extraordinary (Appendix, p. 3a,

55a). It is submitted, however, that the fact of 71 employees being discharged, from among many thousands, in 19 Plants over a period of a year—an average of less than four in each Plant during the year—does not indicate, upon the face of it, anything massive or even unusual.

What is unusual, and extraordinary, and completely astonishing—upon its very face—is the fact that after hearing, through its Examiner, the conflicting testimony of 443 witnesses on a multitude of disputed and material factual issues, the Board never once credits a Company witness against a Union or Board witness and never once discredits a Union or Board witness against a Company witness.

The Court below says that "this broadside charge . . . almost entirely ignores the implications of the Board's dismissal of eight complaints against the Company" (Appendix, p. 16a). The broadside charge is nevertheless true and correct. The rare dismissals, which the Court refers to, occurred in situations where, without reference to any contrary testimony, the evidence against the Company was patently insufficient, even if accepted, to make out a case. None of these dismissals resulted from the crediting of any Company witness over a Union or Board witness.

A majority of the witnesses testified for the Company. They included not only supervisors and representatives of management, but rank and file employees and persons unconnected with the Company as well. Their testimony penetrated thoroughly, patiently and precisely into all the myriad details of the case.

Amidst the vast complexity and variety of factual issues, which arose and developed during months of hearings at various locations, the proposition that truth—no matter where pursued—lay always on the side of the Board and the Union in any material conflict of testimony, and never on the Company's side, confounds every principle of natural probability. It does not comport with common sense and human experience—that on this wide and intricate panorama, verity was the exclusive monopoly of witnesses on one side, and was never to be found elsewhere.

What the Petitioner suggests here goes beyond "massive bias" on the part of the Board and its Examiner (Appendix, p. 7a). The question the Petitioner raises is whether it received a trial at all—or whether the Board proceedings were an elaborate and hollow ceremony.

When an administrative agent listens to hundreds of witnesses, on opposite sides, narrating their respective versions on hundreds of factual issues, and then on every material conflict, without exception or deviation, points always to the Union or Board witnesses as possessor of the truth—and when the victim of such unvarying rulings is told that he can get no relief in the Courts, because administrative "findings" enjoy virtual conclusiveness and finality—it is to him a frightening thing, and to the general American public it is incredible.

Whatever may or may not be done for this Petitioner in this case, it can safely be predicted that such a regime of uncurbed administrative action cannot long endure as an acceptable system of justice in this land.

In the discharge cases here involved, it is substantially conceded that in each instance, "there existed a valid ground of discharge" (Appendix, p. 15a). The pivotal question, says the Court, was whether such ground "was the real one" (Appendix, p. 15a).

In each instance, witnesses, after narrating and explaining the ground, testified that it—and not Union affiliation on the part of the employee—was the reason for the discharge, and that the employee would have been discharged for the reasons shown even if he had had no connection with the Union.[1]

Thus the ground for discharge being present and witnesses asserting that the employee was discharged on that account—and that he would have been so discharged whether connected with the Union or not—and there being no proof that were he non-Union he would not have been discharged for the cause shown—the Board nevertheless chooses to infer, that is "find," that the employee was discharged because of his being connected with the Union.

Yet the Statute affirmatively provides that if an employee is "discharged for cause," there shall be no order in his behalf. 29 U.S.C. §160(c). And the law is clear that

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[1]In thirteen of the cases, there was no evidence establishing that management or supervision were aware of any Union connection on the part of the employees discharged, and, on the other hand, management and supervision testified unequivocally and emphatically that they were not aware of any such. These were the cases of Herman Burgess, John Eller, Eugene Evans, Albert Sanders, Randall Ross, Cornell Laughter, Dale Payne, Lillian Hux, Rochella Hux, Adolphus Bell, Leroy Casey, Reginald Nicholson and Lloyd Edwards.

the burden is, and remains throughout, upon the Board to prove that the employee was discharged because of Union affiliation on his part.

" 'Furthermore, in section 10(c) of the amended act, as proposed in the conference agreement, it is specifically provided that no order of the Board shall require the reinstatement of any individual or the payment to him of any back pay if such individual was suspended or discharged for cause . . .' "

National Labor Relations Board vs. Local Union No. 1229, 346 U. S. 464, 473, 474, 74 S. Ct. 172, 98 L. Ed 195 (1953)

"To conclude from such evidence that respondent discharged Wingate because of her union activities requires the pyramiding of inferences which has been so often rejected by the Courts.

. . .

"It must always be remembered that the burden of proving discriminatory acts by the employer is and remains upon the General Counsel . . ."

National Labor Relations Board vs. Miami Coca-Cola Bottling Co., 222 F. 2d 341, 344, 345 (5th Cir., 1955)

"If discrimination may be inferred from mere participation in union organization and activity followed by a discharge, that inference disappears when a reasonable explanation is presented to show that it was not a discharge for union membership."

National Labor Relations Board vs. United Brass Works, Inc., 287 F. 2d 689, 693 (4th Cir., 1961)

"The mere fact that Medlin was active in the union can not alone support a finding of discriminatory discharge because there is here substantial evidence that the employer discharged him for cause."

National Labor Relations Board vs. Montgomery Ward & Co., 157 F. 2d 486, 492-493 (8th Cir., 1946)

"If his [the employer's] explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation."

Martel Mills Corp. vs. National Labor Relations Board, 114 F. 2d 624, 631 (4th Cir., 1940)

"True it is that the Company discharged three employees who had been engaged in the strike. But discharge after participating in a strike without more is not conclusive proof that they were discharged *because* they had so participated. Granting that an inference may be drawn from the mere fact of participation followed by discharge that such participation was its cause, the inference disappears when a reasonable explanation is presented that participation in the strike was not the cause of their discharge".

Ohio Associated Telephone Co. vs. National Labor Relations Board, 192 F. 2d 664, 666 (6th Cir., 1951)

An employer, who strongly desires and prefers to operate his Plant on a non-Union basis, may welcome the fact that a Union activist has done, or failed to do, something

constituting clear ground for discharge. Still if a non-Union employee would equally have been discharged for doing, or failing to do, the same thing, then the true rule is that the employer is not to be convicted of violating the law upon discharging the Union employee. And further, as has been emphasized, the true rule is that the burden is on the Board to prove that such is not the case.

"In each case such membership may have been the cause, for the union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge, it is a fact to which he may swear. If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn evidence on the exact point".

National Labor Relations Board vs. Stafford, 206 F. 2d 19, 23 (8th Cir., 1953)

"Specifically we are in no doubt that the evidence completely fails to support the finding that William Robinson was discharged because of his membership in, and activity on behalf of, the union. On the contrary, it shows without contradiction or dispute that he was

discharged for open and continuous insubordination and disobedience of orders, and the order requiring his reinstatement with back pay is itself an unfair labor practice and as such is prohibited by Section 10(c) of the act which provides, 'No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged . . . for cause . . .,' 29 U.S.C.A. §160(c)".

National Labor Relations Board vs. American Thread Co., 210 F. 2d 381, 383 (5th Cir., 1954)

"In considering the propriety of these discharges the question is not whether they were merited or unmerited, just or unjust, nor whether as disciplinary measures they were mild or drastic. These are matters to be determined by the management, the jurisdiction of the Board being limited to whether or not the discharges were for union activities or affiliations of the employees".

National Labor Relations Board vs. Montgomery Ward & Co., 157 F. 2d 486, 490 (8th Cir., 1946)

"The Board may not 'substitute its judgment for that of the employer as to what is sufficient cause for discharge' . . . And discrimination may not be inferred from an employee's mere membership in a union . . . In every case the burden is on the Board to prove that an employee's discharge resulted from his union activities".

National Labor Relations Board vs. Wagner Iron Works, 220 F. 2d 126, 133 (7th Cir., 1955)

The Court below says that "most" of the Company's attacks on the Board's findings are "entirely frivolous" and that "all" of them are "without merit" (Appendix, p. 19a).

This broad pronouncement includes, for example, a case in which the Company is defending against reinstatement of an employee, with back pay, not only on grounds of plausible and reasonable cause for discharge, but also on grounds of the employee's own testimony that, upon being told by her supervisor in the supervisor's office that she was being terminated for poor performance, she said to the supervisor "give me my damned check" and "reached over" and "slapped him" (8434, 8550[1]). As she expressed it:—"I hit him as hard as I could" (8434). Yet the Board, with the approval of the Court, orders the Company to reinstate this employee with back pay[2].

The Board, in its Decision and Order, refers to a decision of the United States Court of Appeals for the Fourth Circuit as supporting its ruling in the case of this employee (J. A. 18-19). But upon referring to the opinion of the Court of Appeals for the Fourth Circuit, it is quickly to be seen that in that case the employee there involved had not assaulted anybody.

In the case before the Fourth Circuit Court, that Court made clear that it was dealing only with a situation in

[1]All references having no other designation than page numbers are references to the transcript of the record made at the hearings before the National Labor Relations Board Trial Examiner, which is now on file with this Court.

[2]Shirley Hobbs.

which "an outburst of anger" in "no way harms or inconveniences the employer". There the evidence was that the employee, apparently in a conversation with another employee, "threatened to harm" a supervisor and "was rude" to a Company official who "intruded upon" a discussion she was having with another officer of the Company. *National Labor Relations Board vs. M & B Headwear Co.*, 349 F. 2d 170, 174 (4th Cir., 1965).

The same Court has emphasized that "reinstatement of employees" who have committed acts "of violence" is not "proper action to 'effectuate the policies' of the Act". *National Labor Relations Board vs. Kelco Corporation*, 178 F. 2d 578, 581 (4th Cir., 1949); *National Labor Relations Board vs. Longview Furniture Co.*, 206 F. 2d 274, 276 (4th Cir., 1953).

It is likewise held that even though an employee has been discharged in violation of the Act, the fact that he later threatened to assault the management representative who made the decision to discharge him, bars him from reinstatement and back pay, even though the employee did not carry out such threat. *National Labor Relations Board vs. R. C. Can Co.*, 340 F. 2d 433 (5th Cir., 1965).

Heretofore, the Board itself has specifically ruled, exactly contrary to its holding in the present case, that although an employee was discharged in violation of the Act, when that employee, upon being informed by his supervisor that he was to be discharged, committed a physical assault upon the supervisor, he became thereby barred from reinstatement and back pay. *Carthage Fabrics Corporation*, 101 NLRB 541, 31 LRRM 1114, 1116 (1952). Such was

also the holding of the Board in *Renfro Hosiery Mills, Inc.*, 122 NLRB 112, 43 LRRM 1221 (1959).

Indeed, the Board has made the same ruling as to a case in which an employee, discharged in violation of the Act, assaulted "a fellow employee" whom "she suspected of having informed her employer of her Union activities." *Stein-Way Clothing Company, Inc.*, 131 NLRB 132, 48 LRRM 1015 (1961).

It may well be wondered whether the Court below regards the reasoning of these authorities as "entirely frivolous" or as simply "without merit"—for they unquestionably support the Company's contention in the case of this discharged employee.

It is indeed difficult to understand how the Board and the Court can take such a disdainful view of the Company's defenses, in these discharge cases, in the light of the facts presented by the record. A few further illustrations might be worthwhile.

Herman Burgess, for example, was not discharged on account of any poor performance or misconduct on his part. He was laid off in the course of a curtailment of personnel occasioned by the closing down of an old Plant and the moving of operations to a new Plant nearby (8050, 8072). The Board does not question but that the move and the curtailment were reasonable and necessary.

Burgess testified repeatedly and emphatically that "the job" which he "considered to be" his, and which "the Company considered to be" his, "was sweeping" (8071, 8072). Burgess stated unequivocally that "sweeping" was still

his "job" at the "time of the transfer to the new Plant" and that he "wouldn't give up the sweeping job" for other jobs (8050, 8051, 8052).

The new Plant utilized only three sweepers (8072). All three of the sweepers in the new Plant had greater seniority in that job than did Burgess, as Burgess himself testified (8073, 8076). Burgess was thereupon laid off (8047-8048, 8050).

There is no evidence whatever that the Company, in transferring employees to the new Plant, applied or followed seniority on any basis other than a "job" basis. The Board does not contend otherwise. Yet the effect of the Board's ruling is to decree that the Company unlawfully discriminated against Burgess because it followed, with respect to him, its normal job seniority system.

At another time and at another Plant, one Charles Capps was laid off due to curtailment in the weaving of "samples" on the looms (1286). Capps was a loom fixer.

The evidence was undenied and unquestioned that, among all the fixers "in the Plant" on all three shifts, Capps was the lowest in seniority (1287-1288). The Board apparently, however, found fault with the Company because Capps was not put back to work, when he thereafter sought employment with the Company.

But as to this, the Company explained that after Capps was laid off, it learned that he had been discharged by another employer—before applying for work with the Company—because of his stealing property belonging to the other employer (1297-1298). In testifying Capps ad-

mitted that he had been discharged by the other employer "on account of taking some Company property," and that this "probably" came to the attention of the Stevens Company after he had been "laid off" in the curtailment of sample weaving (273).

James Goodwin was a warehouse employee at another location. He was discharged for deliberately leaving the Warehouse premises during working time, without permission, and driving approximately a half mile down the road to a cafe (3203-3207, 3259, 3263). In his testimony, he admitted that he had no permission to do this.

Goodwin's supervisor specifically testified that he had never known of any such thing happening before (3262). Moreover, another employee was discharged for going with Goodwin on this same occasion. The other employee, insofar as the management or supervision were aware, had not been connected with the Union in any way or at any time. The Board makes no complaint as to the Company's discharging him for committing the same offense as Goodwin.

David Collins worked as a laborer in another Warehouse. He was discharged for refusing to straighten cases in the upper tiers of the bins in the Warehouse (6674).

Collins admitted on the witness stand that, on the last day he worked, when asked by his supervisor to straighten these cases, he refused to do so (6137, 6146, 6674). In his testimony, Collins further admitted that his supervisor told him that he thought "it was only fair" for Collins "to do what" the other employees "had to do," and that he, the supervisor "wasn't going to require" Collins "to do any-

thing except what he [the supervisor] required the others to do" (6132).

Collins denied that he and the other employees had always been required to straighten cases in the upper tiers of the bins. His supervisor and three of his fellow employees specifically and unequivocally contradicted him as to this (6725, 6727, 6729, 6770). No witness corroborated Collins with respect to this work, which he admittedly refused to do.

It is unquestionably and naturally true, as pointed out by witnesses throughout these cases, that many employees in the course of a Union organizing drive, becoming excited and distracted or enthusiastic and active, do rapidly and drastically deteriorate in their work performance. Some of them become suddenly hostile or defiant toward management and supervision and practically invite discharge. Such basic reality—confirmed by repeated testimony in this case and by common knowledge and common sense as well—the Board and Court seem entirely unwilling to accept or to take into account.

Instead, they find severe fault with the Company for shifting, as they say, from a "permissive manner" of dealing with employees to a stricter regime (Appendix, p. 5a).

In the first place, as witnesses for the Company stressed, it is quite an exaggeration to picture a Company, striving for efficiency in a highly competitive industry, as operating its plants in a "permissive manner." It would certainly not long remain in operation on such a basis. Moreover, it is

certainly both reasonable and likely, as the excitement and activity of a Union organizing campaign begin to effect the attentiveness, or the attitude, of employees toward their work, that the Company would exert greater and greater effort toward maintaining efficiency and attention to the job.

Charles Coley was a "pin-drafter tender" in one of the Plants here involved. Prior to the beginning of any Union organizational effort, he had been given a written reprimand on account of defective work. Thereafter, he received additional written reprimands for the same thing and for failure to clean his machine in accordance with a posted schedule (4960-4969).

On the last day he worked, the clock on Coley's machine had been deliberately "cranked back," so as to make the machine start up without being cleaned—when it had automatically stopped for the purpose of being cleaned (4960-4969, 5052-5060, 5104-5108). On this occasion, Coley was discharged.

It was undisputed that Coley's machine, because of the clock on it having been "cranked back," had started up without being cleaned and had run 325 yards of stock in a dirty condition, after the point at which it should have been cleaned and at which it automatically had shut down for cleaning.

Walter Rackley worked as a checker of cloth weights and yardage in still another Plant. For a good many days prior to his discharge, it had been coming to the attention of his supervisor, that he was making erroneous reports

as to the yardage and the weights of various bales of cloth which he was supposed to have checked (4387, 4393).

In his testimony, Rackley admitted that his supervisor had been "getting after" him about these errors before the Company had any reason to be aware of any connection on his part with the Union (4147, 4148).

The Company brought forward documentary proof showing that on one occasion Rackley had set down a bale of cloth as being 40 yards less than it actually was, and in another instance 107 yards less, in another 49 yards less, in another 33 yards less, and in another 32 yards less—than the yardage which these bales actually contained (4387, 4389, 4392, 4393). The effect of these errors was that the Company was "giving away", to its customers, cloth to the extent of these yardages (4387).

In another instance, these documents showed that Rackley's errors were causing the customer to receive 85 yards less than it should have received, and in another instance 50¼ yards less than it should have received (4390, 4392). And a few days after Rackley's discharge, by reason of such continuing errors, another cloth bale check sheet came in showing that he had set down a bale of cloth as having 174¾ yards less than it actually had (4396).

Instead of expanding further on illustrations or examples the Petitioner will devote the remaining pages of this Petition to a brief summary and analysis of the evidence bearing upon each of the employee discharges at issue in this case.

The Petitioner realizes that an examination of the facts relating to these discharges is a burden which the Court may not be disposed to undertake. The Petitioner prays the Court's patience, however, in such review of these facts as the Court may deem needful. For there is no other refuge, than this Court, against the broad injustice and error which the Petitioner earnestly contends are present in this case.

With respect to employee terminations, the Board's Trial Examiner made findings and conclusions against the Company in 69 cases. The Board made additional rulings against the Company in the cases of two employees. The evidence bearing on these two additional cases will be first briefly analyzed. Then will follow a short analysis of the evidence in each of the 69 cases—in the sequence of the hearings conducted for the various Plants.

Leroy Sims worked as a "roller frame tender" in the Company's Republic Plant No. 2, at Great Falls, South Carolina. He testified that the employee who tended these same machines on the preceding work shift, left some of them in bad condition, on several occasions, and that he, Sims, becoming impatient at this, "quit" the job (840, 845). The uncontroverted testimony was that Sims told his immediate supervisor, J. T. Temple, that he was quitting, and then simply walked off the job in the middle of the shift (845, 1595).

Sims' supervisor, Temple, testified that he asked Sims to wait and take up the matter with the General Overseer, James W. Bankhead, who was not there at that time but who would be on hand at the beginning of Sims' shift the

next afternoon (1612, 1759). Instead, as already noted, Sims walked out and went "home" (845).

In his testimony, Sims stated that he was aware that some of the machinery had to be shut down, because of his thus abruptly leaving the job (859). It is also undisputed that after Sims quit, another employee was placed in his job, and that, at the time of the hearing, this employee still held the job (1611, 1613-1614).

The Board does not contend that there was anything in the circumstances of the case constituting a constructive discharge of Sims, nor that the Company was guilty of any wrongdoing with respect to the termination of Sims' employment. Instead, the Board finds that the Company committed a wrong in later failing to take Sims back into its employment on another job (J. A. 12).

In support of this conclusion, the Board points to testimony by Sims to the effect that after he quit, he was told by the General Overseer, James W. Bankhead, that despite his quitting, Bankhead was "going to work something out" in the way of another job and that, he, Sims, should "come back prepared to go to work Thursday" (846, 847). As to this, it is first to be noted that Bankhead's version is entirely different. He testified that after Sims' quitting, Sims "asked" him if he "could give him a job," and that he told Sims that he "did not have anything open," and that Sims then stated that he would come by and "pick up" his pay check "next Thursday," which would be the regular pay day, and "that was all that was said" (1696). The Board, of course, chooses to credit Sims and to discredit Bankhead.

And the Board then proceeds to "find" that the transition from Bankhead's promising "to work something out" for Sims and thereafter failing to do so, was unlawful. The proof of unlawfulness, says the Board, consists in the fact that on the day after Bankhead told Sims — according to Sim's controverted testimony — that he would try "to work something out" for Sims, the Company received an affidavit signed by Sims, along with many other affidavits, which had been filed by the Board in an injunction proceeding brought against the Company under Section 10(j) of the National Labor Relations Act (J. A. 11). There is, however, no evidence whatever that Bankhead, who Sims claims was trying "to work something out," had any knowledge of any such affidavit.

But upon Sims' controverted evidence that Bankhead told him that he, Bankhead, would try to find another job for Sims and upon additional conjecture that Bankhead was deterred from doing so by an affidavit which Sims had signed, the Board arrives at a "finding" that this employee, who by his own admission, abruptly walked off his job and quit the Company's employment, was unlawfully discriminated against, when the Company failed to give him another job.

Herman Burgess worked in the Company's Piedmont Plant, at Piedmont, South Carolina. His regular job was that of sweeper, but from time to time he had worked on various other jobs (8049).

In the Spring of 1964, operations in the Piedmont Plant were largely discontinued, and many of the employees were given employment in a new Plant nearby, called the

Company's Estes Plant, where operations were being started up (8050). The new Plant utilized only three sweepers (8072). All three of the sweepers in the new Plant had greater seniority in that job than did Burgess, as Burgess himself testified (8073, 8076). Burgess was thereupon laid off (8047-8048, 8050).

There is no evidence, as of the time of the hearing in the Summer of 1964, that he had been terminated or severed from the Company's employment. There is likewise no evidence that the Company, at the time of Burgess' lay-off, was aware of his being in any way connected with the Union.

Yet the Board pronounces that the Company unlawfully discharged Burgess. The Board points out that Burgess had performed "a number of different jobs in the carding room" and "had seniority over many other" employees in this department (J. A. 13). Unmentioned by the Board is the repeated and emphatic testimony of Burgess that "the job" which he "considered to be" his, and which "the Company considered to be" his, "was sweeping" (8071, 8072). Burgess stated unequivocally that "sweeping" was still his "job" at the "time of the transfer to the new Plant" and that he "wouldn't give up the sweeping job" for other jobs (8050, 8051, 8052).

There is no evidence whatever that the Company, in transferring employees to the new Plant, applied or followed seniority on any basis other than a "job" basis. The Board does not contend otherwise. Yet it undertakes to decree a system of departmental seniority for the Company, and declares that the Company unlawfully discrim-

inated against Burgess by following a job seniority system instead of a departmental seniority system.

It is submitted that in this, the Board fundamentally misconceives its function.

The Board relies on the fact that the Company "did not call any witnesses" with respect to the lay-off of Burgess. Why should the Company have called witnesses, since Burgess himself made it unequivocally clear that the Company had followed job seniority in his case, and since there was no evidence whatever that this was not the system and method which the Company consistently followed in making all transfers to the new Plant? The Company was content with the evidence on this subject exactly where Burgess left it, for it shows no sort of unlawful discrimination on the part of the Company against Burgess.

Republic Plant No. 1

Edward Varnadore was a carding machine tender. He was discharged for failing to clean waste material or "fly" from under his "set" of carding machines (1084-1091, 1200, 1227, 1239, 1243).

The evidence was uncontradicted that if too much fly accumulates in the enclosed areas under the carding machines, then "seconds" are caused in the cloth, which is the Plant's end product, and that accumulation of this fly is very likely to cause damage to the carding machines. For these reasons, a time schedule for cleaning the fly from the enclosed areas under the machines was set and strictly enforced. All of this Varnadore himself admitted (212-212A).

Varnadore admitted that, on the occasion in question, he did not clean the fly from the enclosed areas under any of his machines (213). Witnesses testified that the accumulation of fly under Varnadore's machines, in this instance, "was the worst" they had ever seen — being piled up under these machines all the way into the operating parts (1227, 1243). One of these was Baxter Vincent, a non-supervisory employee, who, on the next shift, cleaned this accumulation of fly from under these machines.

The Examiner notes that supervisor Nunnery testified that he could not recall any other card tenders having been discharged for failure to clean waste from under the carding machines. He strangely ignores the testimony of the Plant Superintendent, Walter Lefler, that he did recall another card tender, one Hensley, having been discharged, since Varnadore's discharge, in the same department and for exactly the same offense (1086).

The Examiner emphasizes that Varnadore "had been written up only once during his employment, and that on a matter not related to his work performance" (J. A. 68). Varnadore's own testimony was to the contrary (219-221).

Ralph Harrison was a loom fixer. He was discharged because of his poor performance in this work. His supervisor testified that he had been working as a loom fixer approximately two months and that throughout this time "his work was poor and it was sloppy" (2069). The further testimony was that Harrison's "weavers were complaining about" his fixing of their looms, but that Harrison "said he just couldn't fix them, he just couldn't keep up with them."

The General Overseer testified that Harrison's "section" of looms "was the worst one in the whole mill"; that "the weave room was complaining"; and that on the last night Harrison worked he had never seen this many flags on a job in [his] life" (2086-2087).

The Superintendent of the Plant likewise stated that he "saw more fixer flags on that section than [he] had seen on any section" in the period of "approximately five years" that he had been Superintendent of this Plant (1102).

Even a witness for the Board's General Counsel, J. B. Knight, testified that when Harrison was discharged from the job his "looms were in need of repair" and his job was "in bad shape" and down "in the floor" as it had been when he went on the job (713).

The further evidence is that Harrison had been given "two written warnings" about his work (2080).

Still further, the evidence was that "two or three more" fixers were discharged in this same department for poor performance in loom fixing, all "within three months of the time of Harrison's discharge" (1103).

The Examiner refers to the testimony of Mrs. Juanita Faulkenberry, but he ignores her testimony to the effect that "the job is running far better today" than it was when Harrison was on it (698). Similarly, the Examiner sharply finds fault with the Company, in that the Company, after Harrison failed in his performance as a loom fixer, did not transfer him back to the job of overhauler, which he had formerly held (J. A. 70). He completely disregards the repeated and uncontradicted testimony that

the overhauling work, from which Harrison was transferred, had been eliminated on all three shifts and never "started back up" on any shift (2078, 2085, 2088-2090).

Jack Simpson was a "head slasher" tender. The evidence was that the "warps" which came from Simpson's slasher room were "in bad shape." Simpson's supervisor testified that "a blind man could see that they were in bad shape, the worst that I had ever seen; I have never seen anything that bad"; and that these were "the bad warps that Mr. Simpson was written up for" (1985).

The Superintendent of the Plant, Walter Lefler, testified that he made careful statistical surveys to ascertain the exact nature and source of the trouble and that Simpson was twice given "written warning" about the bad warps for which he was responsible and that when there was no improvement, Simpson was discharged (1092-1095). The further evidence was that "the warps coming out of there have improved greatly," and that "that action with Simpson has cleared the bad warp situation" (1096-1097).

Republic Plant No. 2

Arthur Wright worked as an "oiler and bander" (1720). An important part of his job was to clean bobbin machines and also to clean up the "spare" floor. The Company brought forward clear and strong evidence that Wright was discharged for failure to fulfill these tasks (1489, 1721-1724, 1765-1770, 1787). Three witnesses, J. W. Wood, Jr., G. M. Mendenhall and Alvin Bankhead, testified as to Wright's leaving his spare floor in a "filthy" condition and waste material on one of his bobbin ma-

chines. In testifying, Wright stated that he did not know who left the waste material on the bobbin machine and then later admitted that it was "his" (416-418).

The Examiner says (J. A. 55), with respect to the bobbin machine, that he does not understand why the supervisor failed to instruct Wright to clean the machine "instead of discharging him" — since at the time the supervisor discovered the situation, there was approximately a half hour of working time still remaining on Wright's shift. In this, the Examiner takes no note of the evidence (1753) that at the time, Wright had already stopped work and was "washing up" preparatory to leaving.

The Examiner further points out (J. A. 55) that there was no evidence of Wright's having been "written up," that is, no evidence of the Company having given him any critical personnel action or "P. A." report, prior to his discharge, nor any evidence of "any other person in the spinning department" having been discharged "for failing to perform properly the duties of a cleaner." As to this, however, the Examiner is quite inconsistent, for in other cases, as will later be pointed out, when the evidence does show earlier P. A. reports against the employee discharged, and likewise the discharge of other employees for the same or similar offenses, the Examiner does not regard such circumstances and such evidence as being of any significance or value toward acquitting the Company.

Idolene Steele was a "spare hand." Her usual work was that of cleaning the rollers on the spinning frames. The uncontradicted testimony (1493-1494, 1725, 1771) was that her assignment on the last night she worked was

the same as usual, and that on this occasion she failed to do twenty-five to thirty per cent of the job which had been assigned to her. This she did not deny.

Charles Knight was a tender of finish drawing machines. The evidence for the Company was that he was discharged for failing to "piece" or splice disconnected ends of sliver coming from such machines. He admitted that he did not piece or splice such ends, but claimed that he was not required to do so. Supervisors J. W. Wood, Jr. (1484-1486), J. T. Temple (1590-1591), James Bankhead (1689-1691) and Knight's fellow employees, who were non-supervisory, Don Ray Roddey (1677), William F. Hancock (1683), and Joe Faulkenberry (1678-1679) all testified to the effect that disconnected ends of sliver coming from finish drawing machines definitely had to be pieced or spliced and that Knight's assertion to the contrary was an absurdity; that the card room would virtually cease to operate if such splicing were not done; and that all tenders of finish drawing machines well knew this and had been so instructed.

William Aldridge was a carding machine tender. The evidence is uncontradicted that he allowed the "laps" to run completely out of several of his carding machines, and that this resulted in severe damage to one of them (1495-1496, 1524, 1592-1594, 1644-1650, 1660-1661, 1666). Another card tender, Jesse E. Hilton, testified that he saw the laps running out on Aldridge's carding machines and, as a favor to Aldridge, went to Aldridge, who at this time was in the smoking room, and told Aldridge what was happening, but that Aldridge said "well, I don't care" and

"lit another" ciragette and stayed on in the smoking room approximately "eight or ten minutes" after that, while his carding machine "tore up" (1570, 1581, 1582-1583).

The Examiner took no note whatever of this crucial testimony on the part of Aldridge's fellow card tender. Instead, he cavils at the fact that one of the witnesses failed to "describe the nature or extent of the damage" (J. A. 62). He wholly disregards the fact that J. W. Wood, Jr., the Superintendent of the Plant, testified, without contradiction, that "it took approximately $175.00 worth of material besides two men's labor" to repair the machine (1524).

And here again, the Examiner observes that two of the witnesses could not "recall" a card tender being discharged in this card room prior to Aldridge's discharge. But here also, he ignores specific testimony of a card tender, who is non-supervisory, that he had seen card tenders "get discharged" in this card room, prior to the time of Aldridge's discharge (1577).

Finally, the Examiner muses that in such a situation as occurred with respect to Aldridge's machines, it was "the practice" for a fellow employee, upon observing the circumstances, to go and find the card tender in charge of such machines and "call it to the tender's attention" (J. A. 62). He strangely overlooks the fact that one of the most significant features of Aldridge's case is that this is exactly what took place in this instance, and that Aldridge nevertheless said he "didn't care" and proceeded to light another cigarette and stay in the smoking room for another "eight or ten minutes."

James Lee was a "direct" filling doffer. He was laid off on account of production changes (1773). The looms weaving on direct spun filling were being reduced (1499). This necessitated taking one doffer off "on each shift" (1774). There were three shifts, and the three doffers who were youngest in point of seniority were laid off (1774). James Lee was one of these (1774).

The Examiner questions whether another doffer, Yearwood, did not have less seniority in the spinning department than Lee, because, as he points out, the supervisor, Mendenhall, testified at one point that Yearwood had been transferred into spinning approximately "a couple of months" before the curtailment (J. A. 64). But Mendenhall stated definitely, in his very next answer that Yerwood "had more seniority than Mr. Lee" and "was a more qualified doffer" (1775). And later, Mendenhall specifically reiterated that Yearwood "had more seniority in the spinning room than James Lee did" (1782, 1783).

Lee was not given other work because there was no other work "open" which he was qualified to perform (1774).

It is undisputed that spinners were laid off in the same curtailment (1781), and yet no complaint has been made with respect to them.

Republic Plant No. 3

James Walden was a "tie-in machine" operator. He was discharged for tying "doubles" in an entire warp beam — all the while knowing that he was doing so. Walden admitted that he "did go ahead tying it all in,

even though [he] knew it was defectively tying" (295, 296, 300).

Walden's General Overseer, W. M. Carter, testified that when Walden knew that the machine was tying doubles, he "should have stopped there, and reported it to his supervisor"; and that tie-in operators "have all been warned" to "stop the machine when they know it is tying doubles"; and that he had never known "a tie-in operator to tie a whole warp in, knowing it's tying double" (1299-1302).

Homer Carter, who was a tie-in operator and also fixer on the tie-in machine, testified that tie-in operators "are supposed to stop them [the tie-in machines] off when we find that they are tying doubles" and "report it to our second hand" (1459). He testified that "regardless of what was the matter with this tie-in machine, whether sticking or not, and regardless of what it took to fix it, if the operator knew it was tying doubles," he was supposed to "stop it off" and tell "his second hand" (1475).

Henry W. Bogan, a witness for the Board's General Counsel, likewise testified that if a tie-in machine operator saw that his tie-in machine "was tying doubles," and the operator then "tried to fix it and started again and it was still making doubles," as Walden said was the situation in his case, then the operator "should just quit and get it fixed," that is, the operator should stop the tie-in machine and go to "the supervisor" (359-360).

The Examiner states the matter with scant regard for the evidence. He says that, on the occasion in question, Walden's machine "tied several doubles in one warp"

(J. A. 74). The testimony from all witnesses is that the entire warp was tied in doubles. The Examiner then observes that "believing there was something wrong with the machine, [Walden] reported the trouble to Henry Bogan, his immediate supervisor" (J. A. 74). This is an understatement of ironical proportions, for Walden's own testimony is that he knew the machine was tying doubles throughout. And in stating that Walden "reported the trouble to Henry Bogan, his immediate supervisor," the Examiner slides over the crucial point of the case, namely, that Walden reported the situation to Henry Bogan only after he, Walden, had knowingly allowed the machine to tie doubles in the entire warp beam.

Next, the Examiner says that "the testimony of Hyatt, a weaver on Walden's shift," is to the effect that even though a tie-in operator knows that his machine is tying doubles in a warp, it is nevertheless quite all right for him to continue to mistie an entire warp beam in such fashion (J. A. 75). On the contrary, the testimony of Hyatt, a witness for the Board's General Counsel, was that "what is usually done" in such situation is to "stop and go ask the boss" (340).

The Examiner emphasizes that "prior to Walden no one had ever been fired for tying doubles" (J. A. 75). He, of course, takes no note of the fact that there is no evidence of any tie-in machine operator's ever having gone ahead tying in an entire warp beam knowing that the machine was tying doubles throughout, and Carter, the General Overseer, expressly testified, that he had never known of

a tie-in operator's doing so. It was for this deliberate misdeed that Walden was discharged.

Warming to his task, the Examiner finally declares that the Overseer, W. M. Carter, "attempted to frame [Walden] on the more serious charge of failing to report" to the supervisor the fact that the tie-in machine was tying doubles (J. A. 76). This is indeed a reckless indictment of the Overseer, particularly in view of the fact that on this "more serious charge," Walden admitted himself guilty, in that he conceded that he did not bring to any supervisor's attention the fact that the machine was tying doubles, even though he knew it was doing so, until after he had tied the entire warp beam in doubles.

Three times in its discussion of Walden's case, the Examiner enthusiastically refers to Leland Burns, the Plant Manager, as having called Walden "a damned ring leader" in the Union (J. A. 77). The Examiner says that he "note[s] particularly" this "description" of Walden. This "description" the Examiner readily accepts from the witness Hyatt who, on cross-examination, admitted that, in giving a complete account and written statement of a conversation he had with Burns, he never once mentioned in such statement that Burns had so spoken of Walden (350). And this same witness, whom the Examiner credits without a moment's qualm or hesitation, in trying to explain why he never included in his written statement such description of Walden by Burns, first said that he "was scared" of the Board investigator, and then later said that he hadn't put it in his statement because he supposed that he hadn't "remembered it" (351, 352).

Finally, the Examiner declares that "neither Burns nor Smith [the Plant Superintendent] denied any part of" Hyatt's account of the conversation in which Burns, with Smith present, is claimed to have described Walden in the phrase quoted above. In this, the Examiner completely ignores the testimony of both Burns and Smith with respect to this conversation (965-967, 1933-1937).

But rather than weigh all such evidence the Examiner seems more interested in indulging a predilection for rhetoric — as to which, it must be admitted, he is not without talent.

Charles Capps was a fixer on sample looms. He was laid off due to curtailment in the weaving of samples (1286). Among all the fixers "in the Plant," on all three shifts, he was lowest in seniority (1287-1288).

Other jobs of different nature came open after Capps was laid off. He was not put to work on any of them because, after he was laid off, the Company learned that he had been discharged at another Company — before applying for work with the Company — for stealing property belonging to the other Company (1297-1298). Capps admitted that he had been discharged at the other Company "on account of taking some Company property," and that this "probably" came to the Company's attention after he had been "laid off" in the curtailment in fixing on sample weaving (273).

The Examiner persistently refers to the Company as having "discharged Capps," whereas all the evidence, as pointed out above, is to the effect that he was laid off in a curtailment (J. A. 82).

William Varnadore was a loom fixer on the third shift. Another loom fixer, C. B. Trotter, brought a shuttle, which was in bad condition, to the General Overseer, W. M. Carter, stating that it came from the looms that were in Varnadore's "up-keep" on the third shift, and that it was imposing an extra burden on him, Trotter, the first shift loom fixer, to have to attend to shuttles which Varnadore should have attended to (1307). This was specifically confirmed by the first shift fixer (1803-1805).

Upon the General Overseer's bringing this to Varnadore's attention, Varnadore violently declared that if the Overseer "or anybody else" said that the shuttle in question came out of one of Varnadore's looms, then he was "a God damned son-of-a-bitch." This Varnadore admitted saying (723-724, 1307).

On a later occasion, a loom ran entirely through Varnadore's shift making "seconds" in the cloth. Varnadore should have seen this, because he placed his initials on the cloth at a point immediately adjacent to the defects (1310-1311). A few days later there was a long defective "streak" in the cloth coming from a loom, which Varnadore admitted he should have found and corrected (1312, 1874). Still later he started a new warp on a loom improperly (1876).

On the day Varnadore was terminated, he spent "some seven hours" working on a loom, and then took the "flag" down from the loom, indicating that he had fixed it, and walked away from it. The supervisor, Alvin Brannon, noting that the loom was still out of fix, repaired it within a

matter of five minutes (1313-1314, 1877-1879). Varnadore was then terminated for continued poor performance (1314).

The Examiner resorts to an argument that he cannot be sure that the bad shuttle, which the General Overseer showed Varnadore, was in fact one of the shuttles from Varnadore's "up-keep" or was indeed the shuttle which had been called to the Overseer's attention by the first shift fixer, Trotter (J. A. 85). He simply discredits the testimony of the General Overseer and ignores the testimony of Trotter, the first shift fixer, in which Trotter identified by number the loom from which the shuttle came, further identified this loom and shuttle as being on the "up-keep" of "Bill Varnadore," and still further testified that, in his experience at fixing, he had "never run across a shuttle that was warped like this and the loom not flagged and the weaver trying to run it" (1803-1809).

The Examiner then strains to declare it "significant" that the Overseer, Carter, did not "call Trotter to loom 3308 when Carter and Varnadore were inspecting the loom" and that Trotter was not present "when Carter showed the shuttle to Varnadore in his [Carter's] office" (J. A. 85). The Examiner overlooks the simple fact that Trotter and Varnadore did not work during the same shift but on entirely different shifts (1306).

Jarvis Capps worked as a loom fixer, but for a short while only. He allowed a loom to run for eight hours, throughout "all the third shift," making "seconds" (1322). On another occasion, he was allowing a shuttle to run, in a loom on his "up-keep," in a "splintered" condition (1323-

1325). In this situation, the shuttle had not yet begun to cause seconds but it was imminent that it would begin to do so. Finally, on the occasion which precipitated his discharge, Capps permitted "harness sheaves," which were in his "up-keep" and in plain and prominent view, to wear out without replacing them (1325-1327). He was then discharged (1327, 1889-1891).

The Examiner devotes a great deal of strained reasoning to the "splintered" shuttle, declaring that if the shuttle was in bad condition, it could have caused seconds on the other shifts as well as on Capps' shift (J. A. 88, J. A. 89). "Yet," he declaims, "Capps alone of the three fixers, was held responsible." The Examiner overlooks the simple fact that the loom in question was in the "up-keep" of Capps alone and not in the "up-keep" of the other two fixers at all (1323).

Earl Roberts' job was to "blow-off" lint and waste from looms with an air hose. On a number of occasions, in the process of this work, he carelessly splattered oil and grease on cloth and on warp beams (1302-1305, 2033-2034). This could cause the cloth to be "seconds" for as much as a hundred yards (1303).

Roberts admitted that cloth had been shown to him which had been made "seconds" because of his blowing oil and grease on it. And he admitted that, at least twice, he had been reprimanded and warned about his carelessness in this respect (536-539).

On the day Roberts was terminated, he got oil and grease on a warp beam, and on cloth which was being

woven, on two separate occasions — the last such occasion being due to his failure to cover the loom on which he was working. In this instance, he "blowed what looked like a handful of grease on there, and [it] got into the warp and wove into the cloth" (2033-2036). He was then discharged for his continuing negligence.

Billy Pressley was a cloth doffer. When a white "flag" was put up on a loom, it was his duty to come to that loom and remove, or doff, the roll of woven cloth from the loom (1820, 1850). The situation which occasioned his discharge was as follows.

On the last night Pressley worked, there was a "break-out" or "hole," approximately forty-seven inches wide in the cloth being woven on a certain loom (1393). The weaver on this loom, James Broughton, put up a flag to indicate to Pressley that he should come and remove this cloth from the loom before the hole in it became hidden or "buried" in the roll of the cloth (1822). For approximately six hours this flag remained up, but Pressley did not come and doff the cloth during that time, nor at any time prior to his leaving work that night (1315-1319, 1389, 1822-1824). The weaver, James Broughton, went and looked for Pressley but could not find him (1822).

By failing to doff this cloth before the hole in it became wrapped up or "buried" in the roll of cloth, Pressley allowed a situation to be created which could be of considerable danger to cloth inspectors in the cloth room. For there the cloth is run at high speed over an inspecting frame, and inspectors have their hands against the cloth as it runs at this high speed. Serious injury had occurred

as a result of holes or large defects being thus hidden in the cloth (1316).

James Broughton, the weaver, testified that he had had "similar trouble" about getting his cloth doffed by Pressley and had complained to his foreman "several times" (1824). For Pressley's extreme neglect on this occasion, he was discharged.

The Examiner says that such reason for discharge seems to it "far fetched." He does not explain what he considers to be "far fetched" about it (J. A. 93).

Virginia Trotter was a magazine filler. She had worked for the Company during a previous period of time, but at the time of the termination in question had not been working very long. Shortly before her termination, she received a personnel action report, or write-up, for "mixing the filling" in the magazines at her looms (1330).

On the last day she worked, Mrs. Trotter again mixed the filling in two looms (1330, 2016-2019). Supervisor, M. C. Morgan, testified that this was "the first time" that he had ever "found two looms mixed" (2022). Mrs. Trotter was told to report to the General Overseer, W. M. Carter, but instead of going to see Carter, she went to the payroll department and asked for her pay (1331, 1333, 1893).

Supervisor Morgan testified that he "was inspecting cloth" as "routine" matter and "found filling mixed" on Mrs. Trotter's "job" (2016, 2018). He further testified that the mixed bobbins were plainly visible and "lined up there right in front of your eyes" (2019). Still further he stated that "mixed filling" is not "something that com-

monly occurs" and that he had never "found two looms mixed" before (2022).

The Examiner declares that on neither of the occasions in question "did Carter show the cloth in which the colors were said to be mixed" to Mrs. Trotter (J. A. 98). He disregards the specific and repeated testimony of the General Overseer, W. M. Carter, that, on the first occasion, he did show her "the filling and the cloth" (1330, 1434, 1436). As to the second occasion, it has been noted above that Carter had the filling and the cloth to show to Mrs. Trotter, but that she failed to go see him, though told to do so.

Although the Company's case with respect to Mrs. Trotter does not depend upon the discrediting of her testimony, it is interesting to observe that the Examiner seems so determined to favor her that he "credit[s] her testimony" even when she is, as he notes, contradicting the testimony of her own husband (J. A. 97).

William Sibley was a carding machine tender. He admitted that prior to his discharge, supervisors had "got after" him "about laps breaking, card webs, and several times about mixing the stock" (47). It was the careless mixing of stock that brought about his discharge. In this respect, Sibley's record "was worse than any one else's" (1079).

With regard to the mixing of stock, the Plant Superintendent, Walter Lefler, testified that this could contaminate as many as "25,000 yards" of cloth or more (1080). On three different occasions, within a short period preceding Sibley's discharge, his immediate supervisor, Rex

Jacobs, found stock which had been mixed by Sibley. On the first of these occasions, Jacobs reprimanded Sibley orally. On the second occasion, Jacobs "wrote him up" and on the third occasion, Sibley was terminated (1081, 1199).

Whitmire Plant

Donald Cudd and **Jess Cudd** were spinning frame doffers. D. W. Stone, General Overseer in the spinning department, testified that Donald Cudd and "other doffers" were "written up" some weeks before Donald's discharge for "bad end piecing, loose end piecing and high end piecing" (2223). Donald received three write-ups in this connection, "counting the termination" (2224). On these occasions bobbins which he had improperly doffed were also "showed to him" (2224). The other doffers "improved considerably." Donald did not improve (2225).

At this time, due to complaints from customers "daily inspecting" of the doffing was undertaken. The doffers were told that the bad end piecing "would have to clear up" and that if it didn't, the Company would have to take more drastic action (2227).

Donald Cudd admitted that not only he but other doffers who were not connected with the Union received write-ups (2183, 2184, 2185). He testified that when he was discharged by V. C. Taylor, his immediate supervisor, he was showed five bobbins which "were pieced up too high" and that they might have been his bobbins (2186, 2187). His testimony was that on this occasion, Taylor told him that he was "not improving" and that he would therefore be discharged (2188).

Jess Cudd was a long time employee, but for several months prior to his discharge, he had become more and more careless and inattentive toward his job (2229, 2231, 2299). His immediate supervisor, Samuel F. Reed, testified that "he was growing progressively worse," and that he went to Jess and talked with him about his "bad piecing up, dropping bobbins on the floor, and leaving frames standing and doffing others . . . at least a half a dozen times or more" (2299). He received two "write-ups" prior to the time of his discharge (2232). He would sometimes let spinning frames "stand two or three hours at the time" (2300).

On the last day that he worked, he left a frame standing "from eight o'clock until after ten o'clock," and upon being reprimanded about it, had no explanation except that he "forgot" (2302). It had been only "a day or two before that" that he had been reprimanded "about the same thing" (2302). The testimony of his supervisor was that "it looked as though at that time that he was just trying to do everything that he could to be throwed out" and on this occasion he was discharged (2306).

The testimony of General Overseer Stone and Assistant Overseer Reed, with respect to Jess Cudd's becoming progressively more neglectful in attending to his job, was corroborated by Assistant Overseer Jim Wilbanks, and by Melvin D. Fowler, a non-supervisory employee (2315-2319, 2345).

Industrial Plant

Grady Fields was a doffer in the spinning department. For several months prior to the time of Fields' termina-

tion, the Company had been planning machinery and work changes in this department, which would necessitate some curtailment in the number of employees (2517, 2671). It is undenied that the Company's general procedure in case of curtailment in personnel is to lay off according to seniority (2518). It is likewise uncontradicted that seniority was followed in the case of Fields; that he and another doffer were laid off; and that they were the doffers with least seniority in the department (2518, 2671, 2707).

Still further, it is not contradicted that three other employees were affected by this curtailment, and in accordance with their respective seniority standings. These were three section men or fixers who were moved down to doffing on account of the curtailment (2670). This was specifically confirmed by Brice F. Henson, a witness for the Board's General Counsel whom the Board strongly relies upon (2410).

Henson further clearly testified that, in case of personnel curtailment, employees are laid off according to their respective seniority standings, no matter that they are doing satisfactory work (2413). Likewise, Henson confirmed that the curtailment which had taken place was still in effect (2414).

Yet the Examiner "finds" that the curtailment was not genuine and that the selecting of Fields to be included in the lay-off was pretextual (J. A. 109).

The Examiner points to alleged remarks by Assistant Overseer Sealy to the effect that Plant Manager Hartsell had said that the Company "was going to have to get

rid of" Fields (J. A. 109). It, of course, gives the Examiner no pause that Hartsell and Sealy flatly denied this (2731, 2733, 2734, 2735).

John Carter was a loom fixer. He was discharged for taking it upon himself to "cut a bolt of cloth half in two" at a loom on which he was fixer (2519). The cloth on this loom had become entangled in a roller, but as a fixer, Carter was not "at liberty to judge" whether to cut the cloth off the loom (2526). In so doing, he automatically made "seconds" of all the cloth in the roll on both sides of the cut which he made (2521). If, on the other hand, the cloth were untangled instead of being cut, it might not be "seconds," and the decision as to whether to cut it or not was always one for the supervisor (2527, 2599).

Carter admitted that "the thing to do was to call a doffer or the supervisor" (2433). He claimed that he had done the same sort of thing before, but admitted that no supervisor had ever seen him do so (2447). He further admitted that his wife was the weaver on this loom and that by cutting the cloth, he got the loom back into operation immediately and that thereby she began to resume piece rate earnings immediately (2444).

C. F. Kennett, loom fixing instructor, Charles J. Gibson, loom fixer, and E. M. Wright, loom fixer, all testified that in such situation a loom fixer should never cut the cloth and that all loom fixers had been so instructed (2756, 2763, 2770).

The Examiner says there is no evidence that any loom fixer "had ever before been discharged for cutting cloth

from a loom nor had Carter ever been reprimanded for doing so" (J. A. 112). The Examiner, of course, pays no attention to the testimony that "this is something" that supervisors had "never seen happen before" (2652), and, as has been pointed out above, Carter admitted that no supervisor had ever seen him do it before (2447, 2652). Likewise, Carl A. Boling, a witness for the Board's General Counsel, testified to the same effect (2484).

The evidence is that Carter had, however, received written reprimands on nine different occasions (2476).

The Examiner discusses conversations which took place between Plant Manager Hartsell and Carter, on the subject of the Union (J. A. 110). The Examiner says that Hartsell "came to" Carter "on two occasions at his job" and made certain remarks relative to the Union (J. A. 110). Hartsell testified, on the contrary, that Carter brought up the subject of the Union with him, Hartsell (2522). And Carter admitted that such might have been the case (2439-2441). As to the substance of the conversations, the Examiner, of course, automatically credits Carter and discredits Hartsell.

Doris Hicklin's job was that of battery filler. On the last day she worked, she came into the Plant wearing a very large Union badge, some four inches in diameter, fastened on the front of her blouse (2594).

Mrs. Hicklin admitted that she was clearly told by her supervisor that the large and conspicuous size of the badge was creating distraction among the employees; that it would be entirely all right for her to wear a smaller and

more normal size Union badge, but that she would not be allowed to continue wearing the out-size badge which she had on (2499, 2594). She refused, however, to remove the large badge and was thereupon terminated (2499, 2594).

The evidence was that there had been considerable distraction and disturbance in Mrs. Hicklin's department, incident to her appearing with the large and conspicuous badge on her person. There was testimony, for example, of one weaver standing up on his loom in order to get a good look at her (2528). Further testimony was presented to the effect that any sizeable or bulging objects or ornaments on clothing constituted a hazard in the narrow aisles between the rapidly moving machinery (2596, 2626). There was still further evidence that Mrs. Hicklin was subject to fainting spells, having "passed out" more than once on the job, so that an ambulance had to be called for her (2652). It was pointed out that the large badge on her shirtwaist could easily become a dangerous object if it were to get in any way caught in the running machinery.

Plant Manager Hartsell testified that on various other occasions, because of the factors of either hazard or distraction in the Plant, the Company had required employees not to wear "deck" pants, to change their haircuts or to change bulky clothing, and the like (2528, 2529, 2590).

The Examiner, however, dictates that the Company shall have nothing to say to the size, hazard or distracting nature of a Union badge — no matter that the Company clearly and repeatedly informed the employee that she

was perfectly at liberty to wear a more normal size Union badge (J. A. 113).

Black Hawk Tufting Plant

Richard Wike was a mender-inspector in the Company's Black Hawk Tufting Plant, in Greenville, South Carolina. Approximately a week before he was discharged, Gaston Jennings, Manager of several of the Company's Plants, was walking through Wike's department and saw him "sitting on a box," away from his work, "talking to a boy operating a tufting machine" (3012, 3074). Jennings reported this to James D. Dunn, Wike's immediate supervisor and to Frank Haddon, the Assistant Plant Superintendent (3074).

Dunn went to find Wike and found him still "sitting on a box" and "talking" to an employee at another machine (3013, 3159). Upon bringing Wike back to his work, Dunn found that Wike's job had fallen "behind" (3160). Some days later Dunn came upon Wike "running a machine, one of the machines that he was supposed to be mending on; he was relieving an operator; I sent him back to his mending job then" (3160). On this occasion also, Wike's work "was getting behind," while he ran the operator's machine (3161). Later, the same day, Dunn again found Wike "sitting on a box" and "talking to another operator" approximately "35 to 45 feet" away from his own job (3014, 3161, 3162). On this occasion Wike was discharged.

Although the Examiner will not so admit, Wike himself admitted that employees in work such as his were sup-

posed "to stay at" their jobs and not even "go around helping other folks at different kinds of jobs" (2856, 2857). Haddon emphatically testified that this was not permitted (3011). He explained that there was a "relief man" to take the place of operators who needed to leave their machines, and that when this relief man was not available, the operator was at liberty to "call a creeler from behind the machine to relieve him" (3011).

John Eller and **Eugene Evans** were "tufting machine" operators. They were both discharged because of the following incident. Eller and Evans operated tufting machines next to each other. These tufting machines have high pressure air hoses attached to them. Eller, as a prank, came over and turned the cut-off valve on Evans' air hose. Evans turned the air pressure back on his hose, and in retaliation, sprayed air pressure onto Eller's machine in such manner as to blow lint and waste and "dust" material into Eller's face. The two men then got into a "bear-hug" scuffle in front of these heavy and fast-moving machines. The supervisor was coming by and saw what was taking place (3098, 3100).

A written rule of the Plant stated that "playing or scuffling is absolutely prohibited" (2996). During this same year there were ninety-one injuries in this Plant, requiring the attention of a doctor (2997). One of the employees got an arm caught in one of the operating machines, resulting in the amputation of his arm (2997).

Although the immediate supervisor, Raines, promptly gave both these men written reprimands, the Assistant Plant Superintendent, Haddon, upon the matter coming

to his attention, directed that they be discharged (3001). The uncontradicted evidence is that, at the time Haddon's decision was made, neither he nor anyone else in supervision had seen Eller and Evans wearing Union buttons or had any indication of any Union connection on their part (3003, 3009, 3102). And also confirming the fact that the decision to discharge these men had been made before they came into Haddon's office wearing Union buttons, there was uncontradicted evidence that, before Eller and Evans showed up with Union buttons, arrangements had already been made with other employees to work in their places (3101, 3139-3143).

Haddon testified he knew of six other employees who had been "discharged for scuffling" in the Plant; that these six were discharged in the same year as Eller and Evans; and that insofar as he knew these other employees who were discharged for such horseplay were not "in any way connected with any Union" (3008).

Jack Ross was a tufting machine operator. On the last day he worked, he allowed a large defect to run for around "178 yards," and for approximately an hour and a half, in carpeting that was being woven on his machine (8148, 8176). His supervisor, Fuller, testified that he had never seen a defect run for as long a time and in such "a length of carpet" without being detected (8148). For this extreme neglect, Ross was discharged (8146).

At the same time, the mender-inspector on this machine, Odell Payne, was also discharged, because it was likewise his duty to observe such a major defect running for so

long a period of time (8176). But, strangely, no complaint is made as to the discharge of Payne.

The Examiner perversely raises question as to why the fixer was not also discharged (J. A. 121). He takes no note of the testimony that the situation was not one which would have come to the attention of the fixer, unless and until he had been called to the machine (8177).

As to Ross, the Examiner likewise takes no notice of the fact that, prior to his discharge, he had received several written reprimands for carelessness in his work (8210).

Black Hawk Warehouse

James Goodwin was an employee in the Company's Black Hawk Warehouse. He was discharged for deliberately leaving the Warehouse and the Company's premises during working time, without permission — and he admits that he had no permission — and driving approximately half a mile down the road to a cafe — being gone from his work "some 20 minutes or more" (3203-3207, 3259, 3263).

Another employee, Scuddy Hellums was discharged for going with Goodwin on this same occasion. Hellums, insofar as the management or supervision were aware, had not been connected with the Union in any way or at any time, and no complaint is made as to the Company's discharging him.

The Examiner says that "according to [supervisor] Griffin himself, no one had ever been discharged for breaking this rule before Goodwin" (J. A. 123). He disregards the fact that Hellums was discharged on the same occasion

and for the same offense along with Goodwin. And he ignores the fact that it would be entirely reasonable that no one should have been discharged for leaving the premises without permission prior to this occasion, for Griffin expressly testified that he had never known of any such thing happening before (3262).

He even ignores Goodwin's own testimony that he "never went out of [the premises] during working time before, without some supervisor sending" him (2911-2912).

> "[I]t is at once evident that, to the mind of the examiner, the burden was not on the Board to prove that they [the discharges] were for union activity, but on the Respondent to prove that they were for cause, and also that, to his eager credulity, straws in the wind, offered in support of the Board's case, became hoops of steel, and trifles light as air were confirmations strong as proofs from Holy Writ."
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> *National Labor Relations Board vs. Ray Smith Transport Co.*, 193 F. 2d 142, 144 (5th Cir., 1951)

Harold Robinson was a mechanic's helper. Prior to his discharge he had been reprimanded for various failures to attend to his job as he should have (3367).

On the last day he worked, Robinson left an oil line loose on a bale-moving machine. As a result the machine squirted oil over the Warehouse floor, under 2,000 pounds pressure. The machine was found sitting in such a pool of oil that it couldn't move for lack of traction in the wheels. On this occasion he was terminated (3366, 3374).

Garvis Powers was another employee in the Black Hawk Warehouse. The evidence is that it was brought to the attention of supervisor Griffin that Powers had been operating a lottery in the Warehouse and that Griffin thereupon had Powers brought to the office and reprimanded him about the lottery, telling him that if this "happened again," he would be discharged (4796). The further evidence is that upon being so reprimanded, Powers said "well, I'll just quit now," and that Griffin thereupon "went and got his money and gave it to him" (4796). Powers' immediate supervisor Ray Hinton, who was present at this interview, confirmed that this is what happened (4816). Powers' own testimony was that he "did quit" (4770).

In the face of all this, however, the Examiner "finds" that Powers did not quit, but that the Company discharged him, and without justification (J. A. 129). The Examiner purports to base this on another portion of Powers' testimony in which he stated that at the conclusion of his interview with Griffin, Griffin said to him "now, if you want me to, I'll go get your check right now," to which Powers said he replied "if you want to, go and get it." Upon this, the Examiner says that Powers' leaving was not "a quit either forced or voluntary," but a discharge by the Company (J. A. 128, J. A. 129).

The Examiner disregards Powers' specific and unequivocal testimony that he "did quit" (J. A. 128). The Examiner further disregards the testimony of Griffin and Hinton as to what took place in the interview. The Examiner, still further, transforms Powers' account of the interview into a basis for a "finding" that Powers was discharged.

But this is not the full extent of the Examiner's amazing "handling" of the evidence in this case. Bearing upon Powers' credibility, there was the fact that he flatly and repeatedly denied on the witness stand that he had had any lottery tickets in his possession at the Plant (4771, 4776, 4777-4778). In this Powers was directly contradicted by Hinton, who testified that he saw Powers with the lottery tickets in his possession, selling them to other employees and taking money for them (4811, 4814). William Gamble, who had earlier been put on the witness stand by the Board's General Counsel in the Harold Robinson case and who had given testimony relied on by the Examiner in that case, testified to exactly the same effect (2936, 4828, 4830). In the face of all this, however, the Examiner still prefers to believe Powers.

As to the lottery matter, the Examiner declares that he sees "no reason to go into it," other than "to say that Hinton, on the previous Friday, found a group of employees dealing in the tickets, did not reprimand any one but Powers for violation of the rule against gambling, and did not report the matter to Griffin until sometime the following Monday." The Examiner chooses to ignore the fact that Powers was the employee who was running the lottery and that it was he, not the other employees, who was selling the lottery tickets (4814, 4830). As to Hinton's not reporting the matter to Griffin "until" Monday, the Examiner further chooses to ignore the fact that the lottery incident occurred on Friday afternoon, after Griffin had already left the Plant, and that Hinton did report it to Griffin as soon as Griffin came to the Plant on Monday morning (4812).

It appears that the Examiner was determined to rule in favor of Powers, regardless of the evidence.

Dunean Plant

Albert Sanders was a loom fixer. He became negligent about using his gauge to "box" shuttles. This, in turn, caused "slack picks" and "kinked centers" in the cloth. His supervisor recommended that Sanders be discharged. The Superintendent overruled the supervisor and directed that Sanders be given "another chance" to improve the quality of his loom fixing (3790-3800, 3886, 3890, 3899-3909).

The "seconds" continued, however, on Sanders' looms. His weavers complained about his failure to fix their looms properly. In his testimony, Sanders admitted that he was shown cloth which had come from looms on which he fixed and that, upon being shown such cloth, he had agreed that it was "pretty bad," and that he was then told by his supervisor that this was due to "nothing but sorry loom fixing" (3435). His supervisor again recommended to the Superintendent that Sanders be terminated and, on this occasion, the Superintendent agreed that this should be done (3908).

Sanders testified that so far as he knew, supervision and management were not aware of any Union activity on his part; that he never wore any kind of a Union button, nor visited any employees in behalf of the Union, nor handed out any Union literature, nor sent "any letter or notification" to the Company that he was in any way connected with the Union (3442-3443).

Burrell Knight was a shuttle fixer in the shuttle shop, which is an adjunct to the weave room. The evidence is that Knight was not discharged but was laid off because of change and curtailment in work (4006, 4012). The evidence was that some of the looms in the weave room were being changed from two shuttle operation to one shuttle operation and that in some areas of the weave room, filament yarns were being taken out and spun or coarse yarns were being put in. The uncontradicted testimony was that as a result of these changes, less shuttle fixing was needed (4006).

In deciding which shuttle fixer to lay off, Lollis, the Superintendent testified that although Knight had more seniority than another loom fixer, Turpin, there had been complaints with respect to Knight's shuttle fixing and Tumblin, the head man in the shuttle shop, had "recommended" that Turpin, instead of Knight, should be transferred "to the first shift," that is, moved up (4010). Knight, therefore, was the fixer who was laid off in the curtailment, instead of Turpin.

Lollis, who made the decision to lay off Knight testified unequivocally that he was not at the time "in any way aware" that Knight "was connected with any Union" (4014). And Knight similarly testified that insofar as he knew, nothing had "ever" come "to the attention of the management or supervision" indicating "in any way" that he was "in the Union" (3459).

Randall Ross was a "service man," who brought yarn to the winding machines. On several occasions prior to his discharge he had received written reprimands (3718). The

evidence is that on the last day he worked, he "mixed" or brought the wrong yarn to a winder tender, Mrs. Meriam Donnan (3724). On this occasion he was discharged (3727).

The Examiner says that he believes that the yarn in question was not mixed by Ross but entirely by the winder tender, Mrs. Donnan. As to this, Ross himself testified that he could "have been" the one who mixed the yarn (3540). He further testified that mixing of this sort "can run into thousands of yards of cloth" and "make seconds out of it" (3543). The General Overseer of the department, N. J. Carroll, testified that upon interviewing Ross prior to his discharge, Ross admitted that "as far as he could see" it was "absolutely his fault, not the woman's" (3727).

Carroll and James Woodson, Overseer, explained in complete detail as to why there was no logical conclusion other than that the yarn had been mixed by Ross before he delivered it to Mrs. Donnan (3661-3669, 3723-3724).

Carroll and Woodson testified that they had no knowledge of Ross' being connected with the Union in any way (3670). Ross himself testified that insofar as he knew, the supervision and management were not aware that he had engaged in any activity in behalf of the Union (3547).

White Horse Plant

Horace Anderson was a slasher tender. His supervisor, Ralph Hayes, testified that for a period of several weeks prior to Anderson's termination, he had to "get after" Anderson repeatedly about carelessness in his work and

staying away from his job (4514-4517). On the last day he worked, Anderson negligently ran his slasher machine under tension, so much so as to shear off a substantial quantity of steel filings from the bearing of the machine (4517-4523). The head slasher tender, Conley Wilton, confirmed the fact that Anderson had so operated the slasher machine on this occasion. Upon Anderson's next coming in to work, he was discharged (4521-4523).

The Examiner sets up a straw man for the purpose of knocking him down, by going into an elaborate rationalization to the effect that Anderson's running the slasher under too much tension, which was undisputed, did not prove that Anderson was away from his job and that therefore there was no reason for this incident to have precipitated Anderson's discharge. The Examiner's analytical process seems to take no account of the fact that the Company might very properly object to the extremely careless manner in which Anderson was thus operating the machine, whether he stayed on the job or wandered away from it.

Alvin Baker worked for the Company approximately a month and then quit, as the Board finds. The Board says, however, that this was "a forced quitting."

The evidence is that Baker worked as a sweeper in the spinning department and that his supervisor, Harrison was dissatisfied with his failure to pick up small pieces of white waste from the floor as he swept. Consequently, on the next to the last day that Baker worked, Harrison was "in behind him" repeatedly to require him to pick up such waste from the floor. This the Examiner finds to have been an harassment of Baker, for, says the Examiner, he does

not believe that sweepers were normally required to pick up and save such pieces of waste.

As to this, the Examiner relies upon the testimony of Donald Chappell. But the Examiner is inconsistent in this, for Chappell testified that the sweepers were not supposed to "pick up" any of the waste from the floor, no matter how large or how clean (4660). Yet the Examiner finds that the sweepers were required to pick up the "larger waste" (J. A. 142).

Not only Harrison, but also James Rothell, Wiley Clark and Robert Bishop, all non-supervisory employees, testified that the sweepers are normally and uniformly required to pick up and save all small pieces of clean waste (4686-4688, 4737, 4744, 4752).

In any event, Baker quit his job at the end of a day on which, according to his own testimony no supervisor was "bothering" or "riding" him "in any way" (4643-4644). The Examiner simply refers to this as a day on which "things were a little quieter" (J. A. 143), ignoring Baker's unequivocal testimony that he was not being "bothered in any way."

Walter Rackley was a checker of cloth weights and yardage. For a good many days prior to his discharge, it had been coming to the attention of his supervisor that he was making erroneous reports as to the yardage and the weight of various bales of cloth which he was supposed to have checked (4387-4393).

In his testimony, Rackley admitted that his supervisor had been "getting after" him about these errors before the

Company had any reason to be aware of any connection on his part with the Union (4147, 4148).

He expressed the view that his supervisor, and his fellow employees as well, were simply trying to "cause trouble" for him (4148-4149, 4155, 4156). When his supervisor, Osborne, brought him into the office and talked with him for "about 45 minutes" about the errors he was making he, according to his own testimony "wasn't even interested" in what Osborne was saying (4150-4151).

On the witness stand, Osborne produced documentary proof, the cloth bale check sheets, showing that on one occasion Rackley had set down a bale of cloth as being 40 yards less than it actually was, and in another case 107 yards less, in another case 49 yards less, in another case 33 yards less and in another case 32 yards less — than the yardage which these bales actually contained (4387, 4389, 4392, 4393). The effect of these errors was that the Company was "giving away" to its customers cloth to the extent of these yardages (4387). In another instance, these documents showed that Rackley's errors were causing the customer to receive 85 yards less than it should have received and in another instance 50¼ yards less than it should have received (4390, 4392). And a few days after Rackley's discharge, another cloth bale check sheet came in showing that he had set down a bale of cloth as having 174¾ yards less than it actually had (4396).

The Examiner says that these errors "could as well have been Gambrell's as Rackley's" (J. A. 145). The Examiner totally ignores the testimony that Gambrell, the section man in the cloth room, had nothing to do with, and did not in any way handle, the bales which Rackley had

cleared and sent "on to the press room," and that the errors in question were, all of them, errors relating to bales which Rackley had thus cleared and with which Gambrell had not had any dealings or contact whatever (4464-4465).

Still further, the Examiner refers to certain "defects" in the cloth and says that they "were not chargeable" to Rackley (J. A. 145). In this, the Examiner overlooks, or chooses to disregard, the fact that it was not in any sense claimed that Rackley had anything to do with "defects" in the cloth. He was, as stated above, a checker of the weights and the yardage of bales of cloth and was discharged because of his errors with respect to weights and yardages —not on account of any manufacturing "defects" in the cloth.

Slater Plant

David Collins worked as a laborer in the warehouse at the Company's Slater Plant. He was discharged for refusing to straighen cases in the upper tiers of the bins in the warehouse (6674).

This was a task which Collins, and other laborers in the warehouse, were often called on to do, and had often done (6669, 6670). On the last day he worked, when asked to straighten these cases, Collins, as stated above, said to his supervisor, David Payne, "this is where we are going to have a parting" (6674). In his testimony, Collins admitted that he told Payne that he wasn't "going" to comply with Payne's instruction and that he told Payne that this was where he and Payne "would part company" (6137, 6146). Collins further admitted Payne told him that he thought "it was only fair" for Collins "to do what"

the other employees "had to do," and that he, Payne, "wasn't going to require" Collins "to do anything except what he [Payne] required the others to do" (6132).

Collins denied that the other employees were required to go up on the forks of the lift truck to straighten cases in the upper tiers of the bins and further denied that he had been previously required to do so himself. On both these counts, however, he was specifically and unequivocally contradicted not only by Payne but by his fellow employees Arthur Gilbert, Gilbert Whitman and J. W. Chastain (6725, 6727, 6729, 6770). The Examiner takes no note of these contrary witnesses, ignores their testimony entirely and "finds" the facts to be as Collins claimed.

With respect to a conversation between Collins and Edward Kirby, Personnel Director, the Examiner's comments constitute a striking revelation of his reasoning on the subject of credibility. He says that he credits "Collins' version of this conversation," because it is consistent with other "attempts of Company's supervisors to persuade employees to leave the Union" (J. A. 151). In other words, since Kirby is a supervisor and he has found other supervisors to have violated the law, therefore he "finds" that Kirby violated the law.

With respect to this same conversation, the Examiner goes on to say that since Collins claimed that Kirby, in his conversation, tried to persuade him, Collins, to resign from the Union and he, Collins, did not do so, therefore it must be that Kirby did try to persuade Collins to resign (J. A. 150, J. A. 151). It is submitted that this is bewildering logic indeed.

Joseph Laughter was a "service man" to cloth graders. Prior to his discharge, he became negligent in failing to remove, or doff, the cloth from the graders' frames. This not only held up production but also reduced their earnings — they being workers on piece rates. Thereupon the cloth graders complained to the supervisors (6863-6868, 6892-6910). Frankie Bailey, Ethel Morrison, Ethel Catlin, cloth graders, all testified that such were the facts (6931-6935, 6939-6940, 6951-6954). The Company also tendered for cross-examination Mrs. Sara Galloway, Mrs. Shirley Embree, Mrs. Lou Hester and Mrs. Carrier Reeves as being cloth graders who would testify to the same effect. The Board's General Counsel chose, however, not to cross-examine them (6947).

W. K. Knox and Charles E. Finley, supervisors, further testified that when Laughter was brought into the office and told of these complaints, he accused Knox of "lying" (6867, 6896). Laughter testified that the complaint against him "was a lie" and that he "could have told [Knox] he was lying" (6186, 6187).

In the face of all this, the Examiner chooses not to "find" as he does in various other cases, that the evidence of complaints was a fabrication. Instead, he simply announces his "opinion" that such complaints were "a pretext" for discharging Laughter (J. A. 155).

James Cantrell was a "case marker." He received written reprimands for mislabeling cases and also for staying out from work "without sending in word." Shortly prior to his discharge, when employees in his department were gathered together for a meeting with their supervisor, he

engaged in conduct which the supervisor considered to be disrespectful. Mrs. Polly Burdett, a non-supervisory employee, testified that at this meeting Cantrell was openly "making fun" of Mr. Veal (6963). Upon the Superintendent's interviewing Cantrell about this, he walked out of the office before the Superintendent had finished talking with him (6787-6799, 6897-6910).

On the last day he worked, Cantrell went to eat his lunch away from his work area and into an area where he had been told not to eat. Upon being asked to move, he did not comply and was thereafter terminated (6797, 6798).

The Examiner finds fault with the fact that, shortly prior to Cantrell's discharge, the rules were changed as to where employees in Cantrell's department should eat — or, as the Examiner says, old rules on this subject began to be more strictly enforced — and that Cantrell's supervisor held a meeting to emphasize this to the employees in the department, and in general that the supervisors began to be more strict about the employees grouping up and talking (J. A. 157). He disregards the evidence that the Company was having "particular trouble" with respect to employees "ganging up" and talking with each other, as excitement and discussion about the Union campaign increased and as more Union leaflets began to be distributed at the Plant entrances, and the like (6779-6780, 6909). Under such circumstances, it would certainly seem not to have been unreasonable that the supervisors should have been exerting effort to allay such excitement and restrict such discussion in the Plant.

William Looper worked as a warehouse "stacker." Prior to his termination, Looper received written reprimands for damaging Plant property and for staying in the smoking area too much. The immediate cause of his discharge was mismarking the "tags" which showed the location of cases of goods in the warehouse. On the last three days he worked, Looper mismarked 4 cases on one day, 3 cases on another day and 1 case on the next day (6677). He was thereupon discharged, and evidence was offered that after his discharge and in the same week, his supervisor found 28 more cases which Looper had mismarked (6675-6685, 6749-6752).

Looper testified that "sometimes it would take as much as fifteen or twenty hours or more to find one of these mismarked cases . . . with several men looking for it" (6281).

Thomas Edens was a weaver. At a time when the gates around the Plant were locked, he climbed the fence and went into the Plant and for this he was discharged (7052-7053, 7458). Although Edens' immediate supervisor, Coleman, had only seen fit to give Edens a written reprimand for this, the evidence is uncontradicted that upon the Plant Manager, W. H. Fann, learning of the incident, he promptly directed that Edens be discharged (7053, 7458).

Although Edens claimed that now and then employees did climb the fence to go into the Plant, the various supervisors and employees in this area of the Plant premises, A. L. Tucker, Walter Banks, W. W. Stevenson and Robert J. Bailey, and Fann and Coleman as well, testified specifically and unequivocally that they had never known of any such incidents (7054, 7089, 7097, 7103, 7150, 7457-

7458). The Examiner, of course, disregards all their testimony.

Richard Bell was a "mill ends" clerk. Approximately a month before he was discharged, Bell received a written reprimand for staying off his job and smoking too often. He then was given another reprimand for failing to come to work and giving what his supervisor considered to be an untrue reason for his failure to come in (7370).

On the last night he worked, Bell left his department and was found smoking in another department, which was strictly prohibited. Likewise, on the last night he worked, he left his job and went to the smoking area and began smoking during the last hour of work — which again, was in violation of a strict rule. On this occasion, he was terminated (7349-7353, 7366, 7377).

Carl Richmond was the operator of a print machine. He negligently allowed a large steel "doctor blade" weighing forty to sixty pounds, to fall on an engraved copper roll, thereby damaging the copper roll and putting the machine out of operation (7156-7166). In his testimony, Richmond admitted that the responsibility for allowing this blade to fall was his. He testified that he "knew that if it [the doctor blade] dropped on that copper roll, it would more than likely damage it" and that he knew that he was "supposed to be careful to keep that blade off that roll" (6450-6451). Richmond testified that the doctor blade "knocked a big hole and several scars in the roll" (6452). Even the Examiner agrees that Richmond "neglected" to "hook it [the blade] up with a weight," as he was supposed to do.

The monetary damage resulting from this incident was "several hundred dollars" (7190). An aspect of the matter which the supervisors held most strongly against Richmond, was his failure to inform supervision as to what had happened — until dye began to streak on the cloth and it thereby became obvious that something was wrong with the machine (7156-7166, 7184-7202).

Richmond claimed that he didn't think the falling blade had damaged the roller, but he admitted, in his testimony, that he did not stop the machine to check it (6458). He stated that he thought perhaps the falling blade had not struck the roller, but his supervisor, Childs, testified that when the blade fell, it could not fall anywhere except on the roller (7164). Childs further testified that Richmond told him, at the time of the incident, that he, Richmond, knew that the falling blade had hit the roller (7164).

The supervisors testified that they discharged Richmond because of this occurrence and on account of these circumstances, but the Examiner simply prefers to "find" that Richmond was discharged because he was a Union man (J. A. 169).

The Board points to the testimony of James Randall Edwards, who stated that he had caused damage to the "print roll" on a print machine and had not been discharged or punished for it (J. A. 15). The Board conveniently fails to mention that Edwards specifically testified that he had never damaged the engraved "copper roll," which was the valuable piece of equipment damaged by Carl Richmond (6477); that in his case the "doctor blade" had never struck the engraved copper roll at all (6477);

and that on the occasion when he damaged the print roll, he inspected it to see if it had been injured and could not detect any damage, whereas Richmond admitted that he did not check, in his case, to see whether damage had been done or not (6458).

Cedric Drake was a cloth packer. Prior to his discharge he received "several" reprimands for careless mixing of cloth in the process of his packing work, and for leaving his work and going to smoke an excessive number of times, for example, as often as "six times before lunch" (7292-7300).

On the last day Drake worked, he left his job and his department five times within a period of an hour and twenty-five minutes. He was away from his job for more than half of the time during this period. On this occasion he was terminated (7292-7300, 7346-7349).

A fellow employee, Norris Tankersley, testified that Drake was away from his work so much that it put him, Tankersley, "in a rush" to take care of the work which Drake was neglecting (7344).

Theodore Adams was a "filling hauler." Prior to his discharge, Adams was reprimanded for mixing the "filling," for allowing the looms to "stop off" on account of his failing to supply them with filling and for "allowing empty quills to overflow and become strewn over the floor, where they were a hazard to anyone passing by" (7215-7222, 7253-7257).

Adams' supervisors, Southerlin and Martin, testified that on numerous occasions they "got after" Adams about

these specific failings on his part, and that on each of the last two nights he worked he allowed the quills to become scattered over the floor and also mixed the filling (7217-7218, 7255). Kenneth Rochester, a non-supervisory loom fixer, also testified that on the last night Adams worked Adams' quill cans "were running over" on to the floor and some of the looms which Adams furnished "were out of filling," and that he, Rochester, spoke to the supervisor about this (7273).

In his testimony, Adams admitted that "for some time" before he was terminated, the quills were "getting out of" his cans "on the floor" and that "on more than one occasion" he "laid up" the wrong filling and that his supervisors brought "all these things" to his attention "two or three or more" times (6564-6566). Adams further admitted, in testifying that, at the time he was terminated, his supervisor, Phillips, reviewed with him the fact that he had "been getting after" Adams about the "quills running out of buckets, looms stopping off, filling mixed," for "three or four weeks" and that when his General Overseer, J. B. Martin, asked him, Adams, if "these things" of which he was thus being accused "were true," he, Adams, replied that they were (6568).

With respect to the quills on the floor, it was explained that "it is very dangerous," for the reason that any one passing down the aisles between the machinery, upon stepping on one of these quills, might roll or slide and fall into the rapidly operating machinery and "get killed or hurt really seriously" (7221).

All this, however, the Examiner "finds" to be "trivial" (J. A. 172). Instead, he declares that Adams was discharged simply because he was a member of the Union.

Cornell Laughter worked as a cloth doffer. His supervisor, C. L. Sprouse, testified that Laughter "was not a good cloth doffer from the beginning. He worked only about two months, and I complained . . . and my weavers complained to me about him letting their looms stand, and I'd go tell Mr. Bramlett, and he'd get on him about it" (7119).

On the last day he worked, a roll of cloth in Laughter's section needed to be doffed from the loom and Laughter couldn't be found. The supervisor got another employee "to take off the roll of cloth," but, said the supervisor "we didn't find him for 35 minutes, and he came up, we asked him where he'd been, and he said that he was in the cloth room talking to his brother" (7119). On this occasion he was discharged (7119-7122).

Laughter admitted that he had been "written up" for allowing looms to stand before he ever joined the Union (6384). Still further, he testified that at the time he was discharged, he had not informed the Company in any way that he was "a member of the Union"; that he had "not distributed any leaflets in behalf of the Union"; and that he had never "done anything in any way at this Plant that came to the attention of management or supervision," insofar as he knew, "that indicated activity or interest" on his part "in the Union" (6385).

Yet the Examiner has no difficulty in opining that Laughter was discharged solely because he was a member of the Union.

Greer Plant

Charles Plemmons was a "pin-drafter" tender. Prior to his discharge he had been given written reprimands: — for banging empty "sliver" cans against the floor behind other employees to startle them and "make them jump" —for being off his job talking to another employee, while his own machines were "stopped off" — for coming into the Plant early and "bothering" employees at work on the preceding shift — for horseplay in swinging a mop around "like a baseball bat" in the Plant (4950-4959).

On the last day he worked, Plemmons left his job, went to another employee, Verdin, at Verdin's job, struck up a conversation with Verdin and communicated to him a profane epithet which, he, Plemmons, claimed came from someone else. Verdin went to the supervisor, complaining about this, and on this occasion, Plemmons was discharged for continued "horseplay" and "excessive interference" with other employees (4950-4959, 5046-5053, 5105-5106).

Brannon, Plemmons' supervisor, and Hugh Crain, a non-supervisory employee, testified that "when Plemmons was discharged," the "horseplay stopped" (4958, 5154).

Supervisory and non-supervisory employees alike, testified that Plemmons was the "worst one" in the department with respect to general horseplay and interference with other employees (4950-4959, 5124-5131, 5143, 5153).

Plemmons admitted, in his own testimony, that Brannon spoke to him "a good many times about banging cans behind other employees" (4857). He further admitted that this was "at their jobs" and that when an employee "would

be busily at his job," he, Plemmons, would "slip up behind him and bang it down behind him" (4859). Plemmons agreed that this "could be dangerous," in view of the "heavy" and "rapidly moving machinery" in that department (4859-4860).

Still further, Plemmons admitted that "other employees" did complain to supervision about his "bothering them on the job," and that he "may have" gone over to Verdin and disturbed him with the profane remark above referred to (4874).

In the face of all this, the Examiner prefers to "conclude and find" that Plemmons was discharged simply because he was a Union member (J. A. 179).

Charles Coley was also a "pin-drafter" tender. Prior to his termination, and before the beginning of any Union organizational effort, he had been given a written reprimand for making defective sliver. Thereafter, he received additional written reprimands for the same thing and for failure to clean his machine in accordance with a posted schedule (4960-4969).

On the last day he worked, Coley deliberately "cranked back" the clock on his machine, so as to make it start up without being cleaned — when it had automatically stopped for the purpose of being cleaned. On this occasion he was discharged (4960-4969, 5052-5060, 5104-5108).

The evidence was clear, from supervisory and non-supervisory employees alike, that the pin-draft machines were set up and timed so that they would automatically stop for cleaning at certain points, but that an employee

tending one of these machines could simply "skip" the cleaning and "crank back" the clock on the machine, so that it would start up and resume operation even though it was dirty and had not received the cleaning which was due (5142, 5154). It was undisputed that Coley's machine, on the occasion which precipitated his discharge, had been started up without being cleaned and had run three hundred twenty-five yards of stock in a dirty condition and after the point at which it should have been cleaned and at which it automatically shut down for cleaning.

The Examiner seems to waiver in the face of this evidence, but then comes down on the side of Coley with the pronouncement that after all "it does not appear" that "any harm was done by running the sliver for three hundred twenty-five yards" (J. A. 181). The Examiner seems to labor under the misapprehension that the employer should find no fault, no matter that an employee disregarded a strict cleaning rule and schedule, if in so doing the employee got by without causing any actual damage to the product. This, of course, is a most egregious disregard of the Company's natural and reasonable interest in its manufacturing operations. It is carefully explained, in the record, why the Company had a strict cleaning schedule with respect to these pin-draft machines and why it could not tolerate deliberate acts on the part of the employees to neglect or frustrate this schedule.

Apalache Plant

Artes Smith was a weaver. The quantity of his production was satisfactory, but the quality of his work became

increasingly poor prior to his termination. During the last month that he worked, "there was several occasions when he ran looms making mis-reeds and jerk-backs for several hours" (5248). His seconds were among the "highest" in "the weave room" (5248). In fact "his seconds got to the point where they were the highest of any weaver on the X-3 looms on any shift" (5306).

For two days in succession, just prior to his discharge, Smith ran "mis-reeds" and "jerk-backs" on two separate looms for approximately four hours each. On the last day he worked, Smith ran "19 or 20" mis-reeds on one of his looms for a period of approximately four and a half hours — and placed his initials, certifying his inspection, on the cloth at a point which showed that he was looking directly at the "mis-reeds" when he initialed the cloth. On this occasion he was terminated (5248-5256, 5304-5314).

Both supervisory and non-supervisory employees testified that the running of nineteen or twenty mis-reeds in a loom for this period of time "was not extraordinary" (5255, 5313, 5369). George Hindman, loom fixer, testified that he didn't believe he had "ever" seen that many mis-reeds in a loom (5375). Julian Wade, General Overseer, testified that he had not "ever known of a situation where such a defect," had "been marked within a few inches" of the defect "by the weaver" and "still allowed [by the weaver] to run," without the weaver being disciplined for such incident (5293). Carl Burrell, Assistant Overseer, testified that other weavers had been discharged "for doing that same thing" (5311).

Artes Smith, in his testimony, admitted that on "the last night" he worked, "there were 19 or 20 mis-draws" in his loom, and that these defects "did have [his] initials right at it" (5208, 5214). He further stated that mis-reeds or mis-draws are "running" or "continuous" defects in the cloth, and that the mis-reeds or mis-draws, which ran in his loom on the last night he worked, "had been running maybe 4 hours" (5214).

Nonetheless and nevertheless, the Examiner's opinion is that Artes Smith was discharged because he was interested in the Union (J. A. 184).

Marshall Phillips is still in the employment of the Company. The claim is simply that he joined the Union and that thereafter the Company discriminated against him with respect to overtime work.

In his testimony, Phillips admitted that since he became a member of the Union, he had on various occasions been asked to do overtime work and had "declined" (5232). The testimony of his supervisor, Malcolm Jones, and documentary evidence introduced by the Company, show that after August 13, 1963, the date on which the Examiner says the Company was made aware that Phillips had joined the Union, Phillips was offered overtime work and did work overtime on August 20, and that there were "four or five" other occasions in August that he was offered overtime work and declined it (5378, 5380). In October, Phillips worked eight hours of overtime during one week and twenty-four hours of overtime during another week (5420). In November and December, he was offered over-

time work on three days and did work overtime on these days (5379). In May of 1964, he was offered overtime work on two different occasions and refused each time to do such overtime work (5379-5380).

The Examiner concedes that Phillips "did not inquire" of his supervisors as to "why he was not given more" overtime work (J. A. 185). Nor is there any proof as to how much overtime work other employees received during the period when it is claimed he was being discriminated against. Likewise, the Examiner either overlooks or ignores the documentary evidence referred to above and accepts Phillips' obviously erroneous testimony that after August 13, he was not offered any overtime work and did not do any overtime work until November.

The record is such that the Examiner obviously has no basis for his "finding" that Phillips was discriminated against on account of his being a Union member.

Jerry King, like Phillips, is still in the employment of the Company, and the evidence upon which the Examiner finds that he has been discriminated against is just as meager and inconclusive as was the case with respect to Phillips.

King stated that before he joined the Union there were approximately "three or four weeks" in which he "got some overtime work." He testified that after he became a Union member he had overtime work in only "one week" (5242). There was no evidence as to how much overtime work other employees were getting during either period. King undertook to testify that he thought other

employees were getting as much overtime as "they wanted," but this testimony was ruled out as incompetent (5239).

Supervisor, Herring, testified that "on several occasions" he and supervisor, Jones, tried to get King to come in and work overtime, but that they had "never been able to get him in" (5401). He further testified that, according to his recollection, King had "promised to work overtime" on "one occasion" and "then didn't show up" (5402).

It is submitted that this is indeed a tenuous record upon which to "find" the Company guilty of discriminating against King because of his being a Union member.

Victor Plant

Dale Payne was a helper in the slasher room. A principal part of his work was to move warp beams and, by means of a fork lift truck, place them in racks, to await the need for them in the weave room. In this work, he was required to identify, on a card or stub, each warp beam that he handled and the storage row and rack where he placed it (5567-5573, 5676-5681).

The evidence was that Payne "had a great deal of trouble" in "marking his warp stub correctly" (5676). There were "one or two a week" that he would mark incorrectly. Payne's immediate supervisor, Padgett, brought this to the attention of Brock Beeks, the General Overseer, "two to four times" (5567). Padgett "got after" Payne about this, but Payne "didn't correct it; he kept doing it" (5676-5677).

Several days before Payne was discharged, "four or five" stubs which had been mismarked by Payne came to the attention of Padgett at the same time. For this Payne was given a written reprimand (5568-5571, 5678-5679, 5738).

Within a few days, another stub mismarked by Payne came to the attention of supervision, and on this occasion Payne was discharged. Payne stated to Padgett and Beeks that he had mismarked this last stub (5572). He also testified on the witness stand that such had been the case (5559). The uncontradicted evidence was that the Company had had "very little" trouble with respect to such mismarkings prior to Payne's being on this job, and that the Company has likewise had "very little" trouble in this respect since Payne's termination (5737-5738, 5681).

In his testimony, Payne admitted that it might be necessary "to look right much to find" a beam which had been mismarked and that such mismarking could cause the wrong beam to be put into a loom (5546, 5547-5548). Payne further conceded that Padgett had "been getting after" him prior to the day on which he was terminated and that he had received a prior written reprimand with respect to it (5548). The serious consequences of a mismarked beam being put into the wrong loom were emphasized by Woodrow Stasney, Superintendent of weaving (5754-5755).

Payne's supervisor testified that, at the time Payne was terminated, he did not know of Payne's being "connected with the Union in any way" (5734). Payne himself testified that he never told any supervisor that he was "in the

Union" or that he was "in favor of the Union," and that, insofar as he knew, the supervisors and the management "were not aware" of any activity on his part in behalf of the Union (5544).

The Examiner again goes off on the tangent that "assuming that [Payne] was responsible for misfiling" the warp beams, it was not shown that "production" was actually "affected" (J. A. 189). The Examiner thus seems to be consistently under the illusion that no employee commits a dischargeable offense, unless and until his act or omission is shown to have produced an actual and accomplished damage.

Charlie Jenkins was a loom fixer, who was transferred to the job of warp service man. In connection with this transfer, a "change of status" slip was prepared. The evidence is that it was the uniform policy at the Plant that all employees being transferred from one job to another should sign such a "change of status" form (5573-5581, 5638-5641).

The only issue in the case is whether it was in truth the consistent and uniform policy of the Company to require the signature of employees being transferred from one job to another on such "change of status" forms. There is no contradiction in the record that such in fact is the uniform policy. The General Superintendent of the Plant, Marvin B. Crow, testified that Jenkins' refusal to sign this usual form was "the only reason he was discharged" (5425). The Examiner agreed at the hearing that this was the only issue in the case (5496). The Examiner further stated that he accepted the fact that the Company does "require that,

every time an employee has a change of status" (5666). The Examiner went on to reiterate that "if they always want an employee to sign it, and have him to sign it, it seems to me that that's the end of the matter, if that is found to be the case" (5666).

Crow explained the reasons for the policy and testified specifically and repeatedly that "we require each employee who is changed to sign it" (5639). He further stated that since the beginning of this policy there had not been "any exception that has ever been made" for any employee with respect to the signing of this "change of status" form in case of job transfer. There was no evidence to the contrary.

Yet the Examiner, now forgetting or ignoring this clear focusing of the issue and his own comment with respect to it, says that the Company's requirement that Charlie Jenkins sign the "change of status" form was merely "a pretext" for discharging him, on account of his "Union membership" (J. A. 193).

Watts Plant

Clarence Poole was a "picker machine" tender. During a period of several weeks prior to his discharge, his performance became entirely unsatisfactory, both as to "the quality and quantity" of his work (7790). His supervisor, James Bright, testified that "he was away from his job more" and "his production was down" and that he repeatedly fed chunks of rayon stock that were "too large" into the hoppers of his picker machines (7790-7791). Poole was repeatedly reprimanded in all these respects

(7790). During the last ten days of his employment, Poole's production was the lowest on his shift and the lowest of all the three shifts (7806). Whereas his output should have been "fifty-five laps per shift per picker," it was only "forty-three and one-third laps per picker" for each shift (7810).

With respect to the feeding of the picker machine hoppers, Bright's testimony was that pieces should not have been put into these hoppers "more than five pounds" in weight each. He testified that he had seen Poole put pieces in that were "three to three and one-half feet long, and twelve to fourteen inches wide, and probably six to eight inches in thickness," and that these "would weigh in excess of twenty-five pounds" each (7966-7967).

The final incident, which precipitated Poole's discharge was his leaving his machine and being away for "about twenty minutes." Bright brought this occurrence to the attention of Lyons, the Overseer, and it was decided that Poole should be discharged (7790-7815, 7968-7974).

In his testimony, Poole admitted that his supervisors "got after" him "in regard to chunks too big in the hopper and low production" and about "going to the water house" when he shouldn't (6792). He said that on one occasion he weighed some chunks, which his supervisor was criticizing him about, but that he did not bring to the attention of his supervisor the fact that he had weighed them, or that they were less in weight than the supervisor had said they were (7694).

The Examiner raises question as to why an employee, Chappell, was not discharged or disciplined in connection

with the incident which finally precipitated Poole's discharge, inasmuch as Chappell was away from the picker machine, on this occasion, at the same time that Poole was. The Examiner, however, disregards the testimony that Chappell, on this occasion, was away from the machinery not "over three or four minutes," whereas Poole, as noted above, was away for "about twenty minutes" (7965).

M. C. Richardson was a "blender machine" tender. Prior to his termination, he had received several written reprimands — some of which the Examiner notes and some of which he seems to ignore. Richardson testified that he thought there were some "four or five" of these (7740).

One of these written reprimands, or P. A. reports, was for failing to keep his hoppers filled to the proper point. This caused complaints from the employees on the next shift (7820). Shortly thereafter, he negligently cut the electrical power on, starting up a blending machine which was stopped for cleaning — an act extremely dangerous to employees doing the cleaning. Richardson's supervisor, Bright, testified that this could "very easily have mangled a man, or killed him" (7821).

On other occasions, Richardson put chunks of rayon that were too large into his hoppers, and again failed to fill the hoppers to the proper point, thereby causing delay and added work to the tenders on the next shift (7819). Upon being reprimanded and "written up" about this again, Richardson said to the Overseer, Lyons, "why don't

you fire me." The next day, after Lyons consulted his superior on the matter, Richardson was discharged (7815-7832, 7974-7980).

Fabricating Plant

Lillian Hux worked for the Company only two days. She had been employed to work in the hemming department at the Fabricating Plant in Roanoke Rapids. Upon coming to work on her third day of employment, she walked into the Plant ahead of her work time and handed a Union leaflet to another employee who was still at work and stood and talked for a short while to the other employee at her work station. The Superintendent of the Plant, Mason Lee, stated that as all the employees "understood," the Company "couldn't allow" this sort of thing, and Lillian Hux was therefore discharged (8804, 8807, 9012-9014). Rochella Hux, the employee who was approached by Lillian Hux, testified that this incident occurred "between fifteen and ten" minutes prior to the end of her, Rochella's, work shift (8479). Rochella's supervisor, Robert Rawlings, testified to the same effect (8804).

The Examiner refers, however, to Rochella's "having finished work," and later repeats that "Rochella Hux had finished her work" (J. A. 204, J. A. 206). He forgets that at the hearing, he, correctly stated the matter to the contrary as follows: — "but the point is, anything she was doing for which she was paid, which she was supposed to do, was work" (8480).

The Examiner also finds suspicious circumstance in the fact that Rochella's supervisor, Rawlings, upon observing

the incident, did not go and speak to Lillian about it, "but instead went directly to Superintendent Lee to report" and did not "pause to inform or consult with Merriman, who was Lillian Hux immediate supervisor" (J. A. 206). The Examiner overlooks the fact that, as Rawlings testified, he had no authority over Lillian Hux, and her supervisor, Merriman, was on a different shift (8805). There is no evidence that Merriman was in the Plant at the time of the incident, and it would therefore seem natural enough that Rawlings would have gone to Lee, the Superintendent, who was, of course, in authority over both shifts and both employees and both supervisors.

It should further be noted that, as the Examiner concedes, Lillian Hux had "no affiliation with the Union and no interest in it."

Rochella Hux was a towel folder. Her Overseer, Robert Rawlings, testified that "she was the lowest girl" he had with regard to "production and quality" (8808). His testimony in this respect was not contradicted. Rawlings testified that he "got after" Rochella "several times" about this (8814). The testimony of Rochella's immediate supervisor, Daisy Little, was to the same effect (8958). She had in fact received three write-ups, or P. A. reports, within a period of less than a year preceding her discharge (8814-8817). Finally, Rawlings brough Rochella to his office and "told her [he] had written her up for low production and poor quality" and that he "had to let her go; she hadn't made any improvement" (8817). Rochella testified that on this occasion, Rawlings had her "production figures listed on paper" and showed them to her (8487).

Rochella further testified that "every now and then some of the girls did get discharged for poor production in [her] department" (8484). She remembered, for example, Barbara Sledge and Carol MacAlexander, who, as she understood were discharged for poor production and who, so far as she knew, "didn't have any connection with the Union" (8485).

Rawlings named a number of other girls who had been discharged in the same department for the same reasons as Rochella Hux — one of them on the same day that Rochella was discharged (8818, 8819-8820). Insofar as he knew, none of these had ever had any connection of any sort with the Union (8818, 8819). The testimony of Daisy Little was to the same effect (8959).

Finally, the uncontradicted testimony was that, at the time of her discharge, supervision and management had not "ever heard" from any source that Rochella Hux "was in any way connected with the Union" (8818). In her testimony, Rochella stated that she "never did attend any Union meetings" and "never did try to get anybody to sign up for the Union" (8487).

The Examiner, nevertheless, has no difficulty in finding that the Company discharged Rochella Hux because of "her interest in the Union" (J. A. 208).

Adolphus Bell was a service man in the cutting and sewing department of the Fabricating Plant. His immediate supervisor, Janet Evans, testified that during "the last one or two months" that he worked, Bell "started wandering off of his job" a great deal (8773). She stated that this

came to her attention because the girls working under her "would run out of work on their tables, and when he wasn't anywhere around, I'd have to go try and find him" (8773). She recounted that sometimes she would "find him in the put-up department" and that sometimes she would "find him in the cutting department," where he had no "business" to be (8773). She testified that she spoke to Griffin, the Overseer, about this "two or three times" (8773).

Mrs. Evans and M. C. Stalls, a supervisor in another department, told of an occasion on which Stalls came to Mrs. Evans and "asked her if Andy Bell was under her supervision" and reported to her that he had found Bell "laying on the bench" in the rest room "either sick or asleep" (8774, 8994). They both likewise testified to another occasion on which Stalls "came to [Evans] one day and asked her if Andy had permission to use the telephone in the put-up office," telling her that "the reason [he] came to her was" because he "had observed Andy on the phone some ten or fifteen minutes," where he had no permission to be (8774, 8994).

Ronnie Griffin, Bell's Overseer, described the "trouble" he had "keeping [Bell] on his job" (8505). He pointed out that when the girls whom Bell serviced "ran out of work," because of his being off the job, this "would hurt their earnings" and at the same time, the Company "wouldn't get production" (8507). Griffin testified, as did Evans, that Bell received several write-ups, or P. A. reports, because of his staying off the job (8510, 8779).

The final incident, precipitating Bell's discharge, occurred when a supervisor, Rawlings, who was not over Bell, noticed him "out on the platform" near the supply room talking to a girl — whom Bell described as a "beauty contestant" (8310, 8788-8790). He brought this to the attention of Bell's Overseer, because he knew that Bell definitely had "no business being on the platform" (8790). Griffin came, and with Rawlings viewed the situation, and then discharged Bell (8518).

The uncontradicted testimony is that, up until the time of Bell's discharge, supervision and management had no knowledge or information that he was in any way connected with the Union (8521, 8779, 8996). Bell himself testified that he knew of nothing "that would have made the Company aware of [his] being in the Union" (8361).

The Examiner's main point seems to be that there was no showing as to what discipline, if any, was administered to the young lady, whom Bell was talking to, at the time of the incident immediately preceding his discharge (J. A. 209). In this, the Examiner disregards the fact that the girl in question was from an entirely different department and, so far as the evidence shows may not have been improperly away from her work but on her regular "break" time.

Leroy Casey was a service man in the "put-up" department. His work was confined almost entirely to the location of the folding tables which he serviced. He occasionally "had to go to the supply room" to get incidental supplies, and otherwise "his duties" did not include his "going anywhere" (8791).

Casey's Overseer testified, however, that Casey "wouldn't stay on his job." He was given write-ups, or P. A. reports for this. The Overseer, the Assistant Overseer, and the floor lady, all testified that he would leave his place of work, wander around in areas where he had no business going and neglect the employees to whom he was supposed to supply material. These employees complained to supervisors. Being on piece rate, failing to get material slowed down their production and reduced their earnings. Casey was reprimanded a number of times (8790-8797, 8952-8955, 8992).

More than a month before his discharge, he was given formal written warning that if he continued to leave his job "without his supervisor knowing" where he was, he would "be discharged" (8793).

On the last day he worked, Casey was out of his department talking with an employee in another department. The supervisor of that department asked him if he had permission to be there. He said that he did. Whereupon that supervisor took Casey to his own Overseer. Casey then admitted in the presence of both supervisors that he did not in fact have any such permission. He was at that time terminated (8793-8797, 8931-8932).

The evidence is uncontradicted that up until the time Casey was discharged, supervision and management were not in any way aware that he had any connection with the Union (8993, 9016).

Reginald Nicholson was another service man. He worked in the inspection department. The evidence is that for

a period of approximately a month prior to his discharge, Nicholson, like several of the other service men, could hardly be kept on his job. He, like the others, was allowed a break in the morning, one in the afternoon and the lunch period and also allowed, of course, to go to the rest room when necessary. His absences from his job, however, far exceeded these normal break times (8509-8529).

Nicholson's immediate supervisor, Mrs. Edna Parrish, testified that she spoke to Nicholson about this "many times" and that she went to Griffin to complain about Nicholson "two or three times a week," during the period of approximately a month immediately preceding Nicholson's discharge (8696-8698). She further testified that the girls whom Nicholson was supposed to service complained "very frequently" about his failure to bring material to them (8699). She stated that despite her efforts and those of the Overseer, Nicholson "really got worse" (8702).

On one occasion Ronnie Griffin, Overseer, was asked by Mrs. Parrish to see if he could find Nicholson "in the rest room" (8509). Griffin did find both Nicholson and Adolphus Bell in the rest room, on this occasion. He stated that "they were sitting on the bench" and that Nicholson "was smoking," and that this was not "an allowed break time for either of them." Nicholson, along with Bell, was given a "write-up" on this occasion. In each case, the P. A. report stated that if non-allowed breaks "continued" the employee would "be discharged" (8510-8513).

On the last day he worked, Nicholson was found taking another non-allowed break "over at the coca-cola machine." On this occasion, Superintendent Lee and Nichol-

son's Overseer, Griffin, discussed the matter and decided that Nicholson should be discharged "because we just couldn't allow him to stay away from his job and to continue staying away from his job, and taking extra [or non-allowed] breaks" (9014-9015).

Nicholson, in testifiying, admitted that he had twice been reprimanded about taking non-allowed breaks "before the Union started trying to organize the Company" (8384). He further testified that Griffin told him on the occasion of his last write-up that if he "took any more extra [or non-allowed] breaks, that they were going to let [him] go" (8388).

The testimony was uncontradicted that up until the time of Nicholson's discharge, supervision and management were not in any way aware that he had any connection of any nature with the Union (8529, 8703, 9016).

The Examiner overrides this with a "finding" that supervisor Rawlings, while sitting in his car at a public drive-in restaurant, "observed Nicholson and other employees" at a "meeting on May 14" at the Union Hall, across the street from the restaurant (J.A. 212). Rawlings, however, testified, without contradiction, that he did not see any employees, on this occasion, or any other occasion, in such circumstances as to convey any idea to him, Rawlings, that any such employees were attending or contemplating attending a Union meeting (8786, 8788).

At this point, the Board's Trial Examiner gratuitously declared, without a shred of evidence to support his statement, that Rawlings "reported" his observation "to Lee,"

the Superintendent (J. A. 212). The Board, modestly refraining from stating such "reporting" by Rawlings to Lee as a fact, achieves the same end simply by declaring that it "is reasonable" to assume that Rawlings "reported" his "observation" to "Plant Superintendent Lee" (J. A. 17). Regardless of the phrasing that the Board may prefer, its "finding" of a "report" by Rawlings to Lee, with respect to observation of a Union meeting, is pure assumption on the part of the Board — in the face of positive and uncontradicted testimony to the contrary.

Lloyd Edwards was a cloth cutter. His supervisor, Marshall Cox, testified that "with respect to quality of cutting" or "mis-cutting," Edwards "was the worst" cutter he had in his department (8929).

Cox and Griffin, Overseer, testified that several weeks before he was discharged, Edwards cut a large batch of wash cloths so carelessly that he made "rags out of them." On this occasion, Edwards received a write-up, or P. A. report, which stated that if his work did not "improve immediately," he "would be discharged" (8539-8540, 8921).

On the last day he worked, Edwards badly mis-cut one hundred wash cloths out of a batch of approximately "four to six hundred" (8544, 8922-8924). On neither of these occasions, did Edwards make any claim that he had not mis-cut these cloths.

In the case of Edwards, the evidence is again positive and uncontradicted that up until the time of his discharge, the Company was not aware that he was in any way connected with the Union (8545, 8933, 9016).

But here, once more, the Examiner resorts to the assumption that Rawlings knew that Edwards "attended" a meeting at the Union Hall "on May 14" (J. A. 213). The phrasing here is that Edwards "attended the meeting on May 14, at which Rawlings observed employees coming and going" (J. A. 213). It will be recalled, however, that Rawlings expressly denied seeing Edwards, or other employees, on any such occasion (8786, 8788). Nor is there evidence whatever that Rawlings did see Edwards at or near any such meeting.

Shirley Hobbs was a napkin inspector and counter. The testimony is, however, that she was "very inaccurate" in her counting of the napkins (8704). Sometimes she put "too many [napkins] in the bundles," but more "often" her bundles were "short" (8704). Her supervisor, Edna Parrish, testified that she spoke to Shirley Hobbs about this as often as "once or twice a week," but that she showed "no improvement," and that she, Mrs. Parrish, didn't believe that Shirley "really cared" (8705).

Before the Union began its organizing campaign, Ronnie Griffin, the Overseer, had given Mrs. Hobbs a written reprimand on account of her inaccurate counting (8706-8707). On the last day Mrs. Hobbs worked, her supervisor, Mrs. Parrish, was spot-checking the bundles and found "the first four" of Mrs. Hobbs' bundles to have been miscounted by Mrs. Hobbs. Her counting was "off" by as much as "three or four" to "every bundle" (8707-8708). Mrs. Parrish reported this to Griffin, and he asked that Mrs. Hobbs be sent to his office, and she was then terminated.

Upon Griffin's telling Mrs. Hobbs that he was discharging her, she, according to both his and her testimony, said "give me my damned check" and "reached over" and "slapped him" (8434, 8550). Her testimony was "I hit him as hard as I could" (8434). She then left, slamming "both doors" as she departed (8545-8551, 8704-8709).

In a footnote to its Decision and Order, the Board, as has been hereinabove noted, quoted from a Decision of the United States Court of Appeals for the Fourth Circuit as authority for the Board's sustaining of the Trial Examiner in his conclusion that, despite her admission of assault upon her chief supervisor, Mrs. Hobbs should be reinstated with back pay (J. A. 18-J. A. 19). But upon referring to the opinion of the Court of Appeals for the Fourth Circuit, it is quickly to be seen that in that case the employee there involved had not assaulted anybody.

The Court in that case makes clear that it is dealing only with a situation in which "an outburst of anger" in "no way harms or inconveniences the employer." There the evidence was that the employee, apparently in a conversation with another employee, "threatened to harm" a supervisor and "was rude" to a Company official who "intruded upon" a discussion she was having with another officer of the Company. *National Labor Relations Board vs. M & B Headwear Co.*, 349 F. 2d 170, 174 (4th Cir., 1965).

The same Court has emphasized that "reinstatement of employees" who have committed acts "of violence" is not "proper action to 'effectuate the policies' of the Act." *National Labor Relations Board vs. Kelco Corporation*, 178 F. 2d 578, 581 (4th Cir., 1949).

It is likewise held that even though an employee has been discharged in violation of the Act, the fact that he later threatened to assault the management representative who made the decision to discharge him, bars him from reinstatement and back pay, even though the employee did not carry out such threat. *National Labor Relations Board vs. R. C. Can Co.*, 340 F. 2d 433 (5th Cir., 1965).

Heretofore, the Board itself has specifically ruled, exactly contrary to its holding in the present case, that although an employee was discharged in violation of the Act, when that employee, upon being informed by his supervisor that he was to be discharged, committed a physical assault upon the supervisor, he became thereby barred from reinstatement and back pay. *Carthage Fabrics Corportion*, 101 NLRB 541, 31 LRRM 1114, 1116 (1952). Such was also the holding of the Board in *Renfro Hosiery Mills, Inc.*, 122 NLRB 112, 43 LRRM 1221 (1959).

Indeed, the Board has made the same ruling as to a case in which an employee, discharged in violation of the Act, assaulted "a fellow employee" whom "she suspected of having informed her employer of her Union activities." *Stein-Way Clothing Company, Inc.*, 131 NLRB 132, 48 LRRM 1015 (1961).

Jarman Hobbs worked as an "open stock" man in the warehouse and shipping department. The evidence is that for some time prior to his discharge, Hobbs had "got to . . . where he would continuously leave his job without permission, talking and interfering with other employees" (9052). Reginald Harris, Overseer of the department, testified that he spoke to Hobbs about this "several times"

and that "he was leaving his job more and more all the time" and that "it didn't seem to do much good to talk to him" (9054).

R. C. Sims, Hobbs' immediate supervisor, likewise testified that he "got after" Hobbs "several times" on the same account (9112). Both Harris and Sims testified in detail with respect to an employee, Nathaniel Britt, who came to each of them, complaining about Hobbs' bothering him at his, Britt's work (9054-9056, 9112, 9114).

Britt testified that Hobbs "would leave his job and come back" to Britt's place of work and try to get Britt "to join the Union" (9139). Britt stated that he "would try to walk around him and he would just come back in front of me, until finally I had to walk away and leave him standing there" (9139). Britt testified that he complained both to Mr. Sims and to Mr. Harris about Hobbs' "bothering" him and causing him "to get behind" in his work and that he would like for them "to talk to Hobbs about it" (9140-9141).

Still further, Britt testified that he told Hobbs that he was "not interested in joining the Union" and was "not going to sign a card," and that thereupon Hobbs said to him "I hope if the Union comes in, you will lose your job" (9141).

Britt's testimony was that, on the last day Hobbs worked, he came to Britt to get a Union card which he had given to Britt "the afternoon before" and Britt told him that he "had destroyed the card," and that Hobbs then said that he would "sign [Britt's] name on a card and send it in" (9141-9142). Britt stated that this dis-

turbed him and that he went to Sims and Harris about it. Harris then asked Sims to send Hobbs to the office, and Hobbs was at that time discharged (9051-9063, 9110-9114).

Howard Jones and W. J. Horne, likewise employees in the warehouse, testified that Hobbs had likewise come to them on their jobs, and while they were working, and tried to get them to sign Union cards. One of these men stated that he reported this to the supervisor, Sims. The other stated that he did not do so (9156-9162).

Hobbs admitted, in his testimony, that, when he was terminated, Harris told him that "it didn't make any difference" whether Hobbs was "for the Union or not," but that Hobbs "had no business bothering employees on the job" (8693). Hobbs further conceded that Harris told him that "at least one employee had come to him," Harris, "telling him that [Hobbs] had threatened him, the employee, in connection with the signing of a Union card" (8694). Hobbs did not say that he asked Harris to tell him who the complaining employee was.

Yet the Examiner finds it passing strange that Harris did not volunteer to Hobbs the name of the employee who was complaining against Hobbs (J. A. 225).

Virginia Ray was an inspector of fringe towels. Her floor lady, Lou Ciarrocca, testified that she was "above the other girls in her quantity" of production, but that "she was the worst" of them all with regard to the "quality of her work" (10504). Virginia Ray worked on piece rate. Her floor lady stated that Virginia's worst fault was in

rushing through her work and passing as "firsts" what she should have classified as "seconds" (10506). Mrs. Ciarrocca stated that she spoke to Virginia Ray approximately "two or three times a week" about this fault. Finally, Mrs. Ray was given a written reprimand for passing seven out of twenty-four towels as firsts, when these seven should have been classified as seconds. This was a rate of error of almost thirty percent.

On the last day she worked, Virginia Ray passed up four towels out of twenty-four, and five towels out of another batch of twenty-four. All of these nine towels, she put through as "firsts," when a more careful inspection would have caused all of them to be classified as "seconds" (10560-10561).

Mrs. Ciarrocca, Thomas Gardner, the Overseer, and Merle Garris, the non-supervisory re-inspector, all explained in detail how the errors in Mrs. Ray's work were found in the normal course of checking and spot-checking, and not by any especial or critical attention to her work (10501-10512, 10554-10568, 10642-10654).

Rosemary Plant

Charles Haithcock and **Lawrence Haithcock** were brothers. They were employees of the "harness department." Lawrence was a satisfactory employee, until his brother, Charles, was hired, and then, as Overseer King expressed it, when "the two brothers got together," supervision began to have trouble with them (10432). The evidence is that they then began staying off their jobs, going to other departments — where they were not supposed to

go — and hiding in the rest rooms there to smoke. King testified that "they'd just do anything they could to shirk the work that was laid out for them" (10342).

James Stratford, the section man who worked with them, testified that he had to go looking for them "almost every day," and that he would say that "during the last few days that they worked there, they wasted about half of their time" (10270, 10280).

On the last night they worked, these two men walked out of the Plant without permission, went over to a nearby lunch room and upon returning, still did not go back to work for more than an hour from the time they originally left. On this occasion they were discharged (10267-10293).

In his testimony, Charles Haithcock made it clear that he understood that he should obtain permission to leave the Plant, for he admitted that on various other occasions when he had wanted to leave the Plant, he sought and obtained permission to do so (10190).

It is noted that Lawrence Haithcock did not appear or testify at the hearing.

Horace Spence was a "tie-in" machine operator. During the last several weeks of his employment he became extremely indifferent and neglectful in his work. His supervisor, Charlie Draughan, testified that he became very careless in watching "his tying in machine" and that since he was "not watching it, he would tie doubles and wouldn't catch it" (10092). Draughan testified that he "got after" Spence about this "maybe ten or fifteen times" (10094). Finally, a Personnel Action report was made out against

Spence for tying "one end so badly that [Draughan] had to have the smash hand cut it out and retie that end" (10096).

A few days later Spence received another Personnel Action report for tying "ten doubles in one warp" and "also some" doubles in another warp (10097).

On the last day Spence worked, "he hooked" up a loom "wrong"; he "tied doubles" in another loom; and in still a third loom he tied "four doubles in the warp" (10100-10103). On this occasion he was discharged (10092-10116, 10141, 10147).

Both E. H. Fuller, the Plant Manager, and Lewis Jackson, Overseer, as well as Draughan, the Assistant Overseer, testified that up until the time of Spence's discharge, they were not aware that he was connected in any way with the Union (10112, 10146, 10160).

In his testimony, Spence admitted that he had received the write-ups referred to above and that they were correct (9757).

In this case, once again, the Examiner pursues the aberration that "the double ends were caught soon enough" that "seconds" did not "result." "Accordingly," says the Board it finds "that the Respondent's reason for Horace Spence's discharge was a pretext" (J. A. 17). It would seem that the Board should understand that the Respondent is not agreeable to its warps being tied "in doubles" by an employee, even if other employees, by diligence, are able to catch and correct such errors before they do cause "seconds" in the final product.

Alex Faison was a "filling accumulator." It was his job to see to it that bobbins of yarn were supplied to the looms in the weave room. In his testimony, Faison admitted that he had received a write-up several months before his discharge for mixing yarn and another P. A. report, shortly before his discharge, for failing to supply yarn to the looms (9831, 9833).

The actions on his part, which finally precipitated his discharge, were his taking bobbins out of one loom and putting them onto another loom and his seeing, but deliberately ignoring, a flag on a loom, which was the signal that the loom needed bobbins (9871, 10011). Robert Musgrove, Superintendent, testified that the first of these "is a very serious offense" and "is not permitted," and that Faison's ignoring of the "flag" was inexcusable (9854-9879, 9928-9959, 10003-10012).

With respect to Faison's connection with the Union, it had been more than a year, at the time of his discharge, as the Examiner recognizes, since he had made it known to the Company that he was a member of the Union (J. A. 218).

Roanoke Plant No. 1

Rosa Rogers was a weaver. She persistently allowed "running defects" to be woven into her cloth, causing the cloth to be "seconds." Her General Overseer, William Golden, testified that "Mrs. Rogers was awful bad in letting running defects or wrong draws get by in the cloth, which caused it to be seconds" (10864).

Months before the Union was ever heard of, she was given a written reprimand, or P. A. report, for allowing a

"wrong draw" to run throughout her entire eight hour shift. In the later Summer of 1963, she was again given a write-up or formal warning. This was for a defect which ran on the same loom through the other two shifts as well, and the weavers on the other two shifts were likewise given write-ups or P. A. reports on this occasion (10864-10876, 10918-10922).

On two occasions during the middle of October, Mrs. Rogers ran other defects making the cloth "seconds." The bad cloth was shown to her. She was told in writing that "if this kind of work" continued, she would not be kept on the job. On the last day Mrs. Rogers worked, she again allowed a "wrong draw" to run throughout her entire shift (10871-10872, 11119-11121). On this occasion she was terminated (10796-10808).

Thomas Conner was a loom fixer. At times his loom fixing was very unsatisfactory, both as to the quality of his work and as to the number of looms that he got around to. His attitude, upon being reprimanded, was often very resentful (11041).

On one occasion, when Conner was working on the second shift, the Overseer, Cecil Frier, gave him a written note or memo as to what he wanted Conner to do on a certain loom which had been "jerking in filling." Frier told Conner that he "wanted to be sure that that loom was fixed that night." Conner looked at the note, and thrust it back at Frier, saying "if you want it fixed, fix it yourself." Frier then told Conner that if he did not go ahead and fix the loom, he, Frier, would consider that Conner had "quit."

After a short while, Conner did go ahead and fix the loom on this occasion (11040-11042).

On another occasion, Conner was given a written list of items to fix on certain looms. Several days later he handed the list back to his supervisor, Joseph Craddock, saying that the work specified on it had been completed. But upon the supervisor's re-checking these items he found that the work had definitely not been done. For this Conner was given a written reprimand (11082-11089).

A few days later, one of Conner's weavers called the supervisor's attention to a loom which she had flagged three times and which Conner had three times failed to fix. The supervisor stopped the loom again and put a note on it as to what was wrong with it. Conner came and put some parts on the loom and took the flag down and started the loom up again. The loom ran long enough for Conner to get away from it and then stopped again. Again the weaver came to the supervisor with regard to the loom. The supervisor went again to the loom and found that the parts which Conner had put on it, he had not adjusted at all. The supervisor then stayed with the loom and helped Conner to get it fixed and adjusted properly (10928-10956).

Conner's loom fixing got no better but worse. On the last day Conner worked, his supervisor noticed that the nylon was out of a shuttle on Conner's job. The supervisor shut the loom down and flagged it and left a note on the loom telling Conner to replace the nylon. Conner came to the loom and apparently did nothing except take the flag down and start the loom up, and threw the supervisor's

note in the waste can. An hour or so later, the supervisor came by the same loom and "found the nylon was still out" of the shuttle. He called Conner over to the loom and "told him that he seemed to have lost interest in his job" and that he, the supervisor "couldn't run a job with him." This was the occasion of Conner's termination (10929-10946, 11082-11089, 11117-11118).

Roanoke Plant No. 2

Guy Jordan was a loom fixer. He was slow and neglectful in his loom fixing.

Not only his own supervisors, but his weaver and the weaver and loom fixer on the same looms on the following shift and the supervisor on the following shift, all testified to this effect (11263-11299, 11394-11401, 11421-11427, 11433-11437, 11452-11454, 11464-11466).

The supervisors on the shift following Jordan testified that "on numerous occasions," upon his coming in to work, he would find that Jordan had left "ten, twenty, fifteen" looms out of fix, and which had to be fixed by the incoming shift (11433-11437).

Approximately a month and a half before the Company was ever informed that Jordan had joined the Union, his supervisor had a detailed discussion with him in respect to his poor performance. The very next night, the supervisor found Jordan in the smoker, within twenty minutes after he had come to work, and at that time four of his looms were flagged and shut down. On this occasion a written reprimand was made out against him (11274, 11281).

Jordan's poor loom fixing continued, and reprimands continued. The last occasion was an incident in which Jordan asked his supervisor to send a cloth doffer to take a roll of cloth off a loom. The doffer was immediately sent, but when he got to the looms, Jordan was in the smoker. Within thirty minutes thereafter, he was in the smoker again with two of his looms shut down and out of production and flags up on them, and at the same time two additional looms of his were marked up on the board as needing fixing. On this occasion Jordan was terminated (11274-11297).

William Butler was a spinning frame doffer. The difficulty that the Respondent had with respect to Butler's performance was that he would not tie down the "tails" on the bottom of the bobbins of yarn. His failure to do this prevented the yarn from working off the bobbins smoothly. The operators in subsequent processes complained about this repeatedly. These included spool tenders and warp tenders, as well as the supervisors in the slashing and weaving departments (11472-11492).

Calvin Barnes, who was a spinning frame doffer along with William Butler, testified that the spinning frames in the department "were of such a nature and in such a condition" that a spinning frame doffer could and should "operate them without making loose tails" (11591). Butler consistently failed, however, to correct this serious fault in his performance (11543-11550, 11560-11564).

Many weeks before the Company was informed that Butler had joined the Union, he was given a formal writ-

ten warning, or P. A. report, for his deficiency in this respect (11479). In that written reprimand, Butler was specifically told that a failure to improve in his performance "could result in [his] discharge" (11479).

On the last night that Butler worked, his Overseer noticed one of Butler's spinning frames on which the tails of the yarn were not tied down. There are two hundred fifty-two bobbins on each spinning frame. This meant that the tails were loose on all two hundred fifty-two bobbins on this frame. Later the same night, Butler doffed another spinning frame in exactly the same way and "messed up" the bobbins on that frame. The bobbins were held and showed to Butler when he came into the Plant the next day. At that time he was terminated (11473-11491, 11543-11550, 11560-11564, 11573-11580).

Patterson Plant

Jimmy Wood was a weaver, but only for a few months. His supervisor, Rufus Turner, testified that he stayed "off of his job too much and for too long a time" (9524).

Wood's neglect of his work resulted in his loom weaving a high proportion of "seconds." At one time his "seconds" got "as high as twenty-five per cent." Turner emphasized that this "was a lot higher than the other two weavers on the same job ever got" (9317).

Before the Company received any information that Wood was in any way connected with the Union, he received a written reprimand, or P. A. report, for his neglect of work (9263, 9526).

Shortly after that, he left an empty soft drink bottle sitting on the floor in the alley near his looms which were in operation. The danger of this was specifically explained by his supervisor (9527-9529). On this occasion, he received another written reprimand (9528).

Within a few days after that, Wood's Overseer, James Cranford, noticed him sitting on a stool near his looms with his head in his hands, and fifteen minutes later when Cranford came back by, Wood was still sitting in the same position, and several of his looms had meanwhile stopped off and were no longer operating (9314).

A short while later, he ran a "mis-draw" making approximately forty-two yards of "seconds" cloth, for virtually his entire shift. For this he was again written up and told in writing that "if this happens again," the supervisor would "recommend [his] discharge" (9529). Several times after that, Wood's supervisor sent him back to his looms when he was away from them and they were needing attention. On the last day he worked, he ran thirty-five yards of "seconds" cloth in one of his looms — again practically throughout his entire shift. On this occasion he was terminated (9531-9533).

Surely it cannot fairly be considered that the Court below was justified in dismissing all of the Company's defenses, upon all of foregoing evidence, as being wholly "without merit" and for the "most" part "entirely frivolous."

CONCLUSION

Upon all that is herein set forth, the Petitioner earnestly prays the Court for a Writ of Certiorari, directed to the

United States Court of Appeals for the Second Circuit, to the end that this Court may review the Decision which that Court has rendered in the present case.

Respectfully submitted,

WHITEFORD S. BLAKENEY
Attorney for the Petitioner

APPENDIX

APPENDIX

OPINION OF THE COURT BELOW

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 390, 389—September Term, 1966.

(Argued May 5, 1967 Decided July 7, 1967.)

Docket Nos. 30914, 30391

J. P. STEVENS & CO., INC., *Petitioner,*

—against—

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, *Petitioner,*

—against—

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

—and—

J. P. STEVENS & CO., INC., *Intervenor.*

Before:

WATERMAN, FRIENDLY and FEINBERG, *Circuit Judges.*

Petitions for review and cross-petition for enforcement of an order of the National Labor Relations Board, 157 N. L. R. B. No. 90, requiring the employer, *inter alia*, to cease and desist from various unfair labor practices and to reinstate discharged employees, and dismissing complaints alleging violations in the discharges of certain other employees.

Order modified and, as modified, enforced.

DANIEL B. JORDAN, New York, N. Y. (Allan Sloan, New York, N. Y.; Adair, Goldthwaite, Stanford, Daniel & Horn, Atlanta, Ga., on the brief), *for Industrial Union Department, AFL-CIO, and Textile Workers Union of America, AFL-CIO.*

WHITEFORD S. BLAKENEY, Charlotte, N. C. (Blakeney, Alexander & Machen, Charlotte, N. C.; Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y., on the brief), *for J. P. Stevens & Co., Inc.*

GLEN M. BENDIXSEN, Attorney, National Labor Relations Board (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, Richard S. Rodin, Attorney, on the brief), *for Respondent.*

FEINBERG, *Circuit Judge:*

This case is before us on two petitions to review and a cross-petition to enforce an order of the National Labor

Relations Board issued on March 22, 1966, 157 N. L. R. B. No. 90, against J. P. Stevens & Co., Inc. ("the Company"). The Board concluded that the Company had engaged in massive violations of sections 8(a)(1), (3) and (4) of the National Labor Relations Act, 29 U. S. C. §§158(a)(1), (3) and (4) ("the Act"), and found, *inter alia*, that the Company had discriminatorily discharged seventy-one employees because of their union activity.[1] The Board's order included notice provisions, some of them unusual, and required reinstatement of the improperly discharged employees. All of this is challenged by the petition to review brought by the Company. The Board also held that the General Counsel had not sustained his burden of showing discriminatory discharges of eight other employees. Six of these discharges form the basis of the other petition to review, brought by the Industrial Union Department, AFL-CIO ("the Union").[2] In its answer to the Company's petition, the Board has cross-petitioned to enforce. With minor modifications, we enforce the Board's order for reasons discussed below. The Company challenges both the Board's extensive findings[3] and its proposed remedies; we turn first to the former.

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[1]The trial examiner found 69 discriminatory discharges and dismissed complaints as to 10 others. The Board disagreed as to 2 of these, raising the total of illegal discharges to 71.

[2]The Union has moved to substitute Textile Workers Union of America, AFL-CIO, as the petitioner in No. 30,391 and to amend the title of the proceeding accordingly. The motion is granted and the title reflects the change. References in this opinion to "the Union," therefore, also include the substituted party.

[3]The findings of the trial examiner were in large part adopted by the Board. The decisions of the examiner and the Board consume approximately 250 printed pages in the joint appendix; the briefs we have received number another 350, and the transcript runs well over 11,000 pages.

I. The Board's Findings

According to the Board, in the spring of 1963, the Union launched a campaign to organize the textile plants operated by the Company in North and South Carolina; this proceeding involves incidents in twenty of those forty-three plants. In response to the Union's appearance, the Company posted a notice on the bulletin boards in the plants which stated its "positive intention to oppose this Union and by every proper means to prevent it from coming in here." (Italics omitted.) The Company also mailed copies of the notice to its employees. In the ensuing months, the Union succeeded in signing up a substantial number of employees. In many of the plants, most of the Union members at the Union's suggestion sent joint letters to their plant manager, of which the following is typical:

> This is to advise you that we, the undersigned, have joined the Textile Workers Union of America, AFL-CIO-CLC, and intend to help in every way that is legal to get our fellow workers to do the same.
>
> We are aware of our rights under the law and any unlawful attempt on the part of the Company or its supervisors to interfere with the rights of Union people in this plant will be immediately referred to the National Labor Relations Board and charges against the parties involved will be filed.

The Company wrote letters in reply; the following is representative:

> We have received a letter written on the stationery of the Textile Workers Union of America, AFL-CIO-CLC,

informing us that you have joined that union. We are taking due note of this information.

We would like for you to understand, however, that your signing up with the union does not give you any immunity of any sort, nor any preference of any sort, nor any preference over other employees. You will be expected and required to perform your job as fully as anybody else—if you wish to remain in the Company's employment.

Thereafter, following management consultation, the Company posted on the various plant bulletin boards the names of employees who had so written and copies of the Company's reply. In the following days or months, many of these workers were reprimanded and discharged; others went to their supervisors seeking advice on how to withdraw from the Union and how to get their names "scratched" from these lists. For a time, such names were crossed off the list.

Prior to the organizing campaign, the plants had been operated in a permissive manner. Once an employee was hired, his tenure was fairly secure; discharges were uncommon. The Company was tolerant, even lenient, in such matters as absences, work breaks, transfers, and rehirings. Formal written reports of employee reprimands, known as Personnel Action Reports or write-ups, were infrequent and occurred only where misconduct was serious or repeated. With the advent of the Union, however, this attitude changed swiftly. Issuance of write-ups, often quickly followed by discharge, became common for Union adherents. Incidents or activities that had previously been over-

looked now occasioned speedy and severe disciplinary action. The examiner found:

> That this sudden tightening up, this splurge of write-ups, had little if anything to do with their work performance, as possibly affected by their interest in the Union, as [the Company] seems to infer (through it offered no evidence of it, and has not so argued) is demonstrated by the fact, among others, that as a rule there was simply no time for any effect to be shown. The normal pattern was a union meeting, generally on a weekend, at which a number of employees joined, the Company advised the same day by letter or telegram, the names received the next working day, if by letter, and the names posted, and a Personnel Action Report, or even discharge, the same day or the next. In the instance of the discriminatory discharges which I have found, the triggering act was clearly the employee's advising [the Company] that he had joined the Union. The write-up or discharge, or both, followed as quickly as a pretext could be found. Frequently, it was found the same day. In many instances the write-ups would be the first ever received by the employee during a long course of employment, or the first received for many years, or the first for the same alleged dereliction.
>
> This record bears no other interpretation than that the write-ups given to these employees were not given them because of their work performance, but to threaten and coerce them, and to build up a case against them

upon which their subsequent discharge for union activity might be defended.

The Board found that the Company also resorted to other means in its campaign to defeat the Union, such as much closer supervision of employees at work and in rest periods, surveillance of Union meetings and Union organizers, and interrogation of employees, all of which far exceeded the "proper means" of opposition referred to in the Company's original notice. In brief, the Board found that the Company followed a pattern of interference, restraint and coercion of its employees.

Against these factual findings, the lengthy briefs in this case create a Pirandello-like effect, so different are the realities seen by each beholder. Time after time, what to the Union and the Board is an obvious discharge for concerted activity is to the Company merely a termination for unsatisfactory job performance. The conflict, of course, has been determined by the examiner and the Board, and it should require but the briefest reiteration that such factual resolutions are not to be lightly disturbed.[4] The Company's appellate response is a blanket attack upon the entire fact-finding process in this case. Focussing mainly on the findings of discriminatory discharges, it argues that each termination was based on a proper reason only, which the Board has ignored; in effect, it accuses the examiner and the Board of massive bias. Thus, the Company devotes

[4]E.g., *NLRB v. Walton Mfg. Co.*, 369 U. S. 404 (1962) (*per curiam*), disapproving the standard for weighing evidence promulgated in *NLRB v. Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 438-39 (5th Cir. 1941), cited to us by the Company. Accord, *Edward Fields, Inc. v. NLRB*, 325 F. 2d 754, 759 (2d Cir. 1963).

two-thirds of its 122-page brief to challenging each and every one of the seventy-one findings of unlawful discharge. To test this accusation, we turn to the Company's first alleged "illustration—not of fact-finding inquiry on the part of the Examiner and the Board, but of determination to convict."

William Aldridge, employed by the Company at its Republic No. 2 plant in Great Falls, North Carolina, was discharged on August 28, 1963. The Company claimed that Aldridge was fired because he let the "laps" of cotton fibers, which are processed in the carding machines Aldridge tended, run out of several machines, causing damage to one of them. The examiner did not believe the Company; he found instead that Aldridge was discharged because he had joined the Union. As support, the examiner pointed to the following evidence: Aldridge had been employed for nine years without once having received a derogatory write-up; less than three weeks before his discharge Aldridge had informed the Company of his Union membership; his name was posted on the bulletin board along with those of several others who had informed the Company they had joined; ever since then, his supervisors had more closely watched over him; Aldridge's immediate supervisor, J. T. Temple, did not testify to the nature or extent of the alleged damage to the machine; and two of the Company's witnesses could not point to any card tender having been fired for a similar offense, despite proof that it is not uncommon for laps to run out of a machine.

The Company criticizes these findings as follows: First, it argues that contrary to the examiner's finding that two

witnesses could recall no card tender ever having been fired in this card room, another worker testified that he had seen card tenders discharged before Aldridge. What the examiner allegedly "ignores" turns out to be one employee's vague statement that in the thirteen years he had been in the card room he had seen card tenders get discharged, but not in the last four or five years; he could not name one who had been fired, nor was he asked nor did he explain why these anonymous card tenders had been fired. On the contrary, the witness did admit that he had damaged machines, which his supervisors were aware of, had sometimes let a lap run through a machine, but had never even been formally reprimanded. It is not difficult to see why the examiner made no mention of this testimony of other discharges; if they did occur, they were years ago and for unknown reasons; no records to corroborate the fact that there had been other card tender discharges, nor any more detailed facts as to a single one were presented by the supervisory personnel who testified.[5]

Second, the Company states that the examiner "cavils" at the fact that Temple could not describe the nature or extent of alleged damage to the machine and "wholly disregards the fact that J. W. Wood, Jr., the superintendent of the Plant, testified, without contradiction, that 'it took approximately $175.00 worth of material besides two men's labor' to repair the machine." But the examiner did

[5]In testimony the Company does not call to our attention, J. T. Temple did remember having fired one frame tender, Sinclair, in May or June of 1963, for refusing to perform his job, and another employee, Sistore, with an unspecified job, for "absenteeism," but could not recall the year.

note that neither Aldridge nor Funderburk, a Company witness, could see any damage. In addition, Temple, the assistant overseer of the card room, who summarily discharged Aldridge, and who claimed to have made a record of the extent of the damage (but threw the paper away) could not describe what Wood so neatly put his finger on. Nor do we believe that simply because the examiner did not mention Wood's testimony he ignored it. Rather, it seems to us that he simply gave it no weight, in view of how suspect this detailed evidence was compared to Wood's poor memory demonstrated by other testimony he gave. As the examiner and the Board found:

> John Wood . . . was as vague as his superior Burns when it came to naming other employees terminated from July 1962 to July 1963 for . . . shortcomings advanced as reasons for the termination of the employees named in the complaint in plant No. 2. . . . Nor could he remember any other employee who was given a personnel action report ["write-up"] for any of these faults during the same period.

This contrasted sharply with the Company's contention that discharges were a common thing and that the ones complained of constituted only about ten per cent of all the involuntary terminations during the period.

Finally, the Company alleges with emphasis that the examiner took no note of the testimony of a fellow card tender that he went to Aldridge in the smoking room to warn him that his laps were running out, whereupon Aldridge said, "'Well, I don't care,'" lit another cigarette, and stayed in the smoking room for another eight or ten minutes instead of returning to his machines. We note first

that in direct contradiction to this testimony Aldridge stated that he had not been in the smoking room but in the water house (toilet facility). Obviously, the examiner believed Aldridge; but more important, the entire incident appears irrelevant. There is no evidence in the record that either Temple, who told Aldridge to go home and initiated the discharge, or Wood, the plant superintendent, who apparently approved it, had any knowledge of the alleged smoking room conversation until sometime after Aldridge had been discharged. Thus, this evidence of Aldridge's asserted contempt for his job duties could not have influenced their decision to fire him. Clearly then, in making findings as to what motivated the discharge, as distinguished from the red herring of later uncovered proper grounds, the examiner and the Board were justified in not mentioning this testimony.

We note also a coincidence not mentioned by the Company but observed by the examiner in his findings with respect to Republic Plant No. 2 and alluded to in his discussion of Aldridge. The same coincidence, with variations, recurred at other plants, as the findings in the examiner's Summary show. Aldridge's name was posted on the Company bulletin board as a Union member about August 17, along with the names of six other employees. Within the next two days, three were discharged. Alarmed, two of the others went to their supervisors, one of whom was Wood, to ask how to get out of the Union.[6] Wood told them they

[6] As Mrs. Frankie Couch put it, "I told [Wood] that I have five children, and that I needed my job, and I felt it was more important than a union, and he told me, well, just prove myself, that I wasn't for the union . . . ."

would have "to prove" to him that they were no longer for the Union. These two employees were not discharged; eleven days later Aldridge was; within two more weeks, the last of the seven was terminated. To describe this evidence as supporting a finding of discriminatory discharge of Aldridge is understatement.

We have examined the evidence regarding Aldridge in so much detail because the Company evidently regards it as a prime example of Board bias. We conclude that it is nothing of the sort. We turn now to another incident which gives the flavor of what the Board found to be the Company's tactics in combating organizational activity and represents the frivolity of most of the Company's attack on the sufficiency of the evidence. The discharges challenged by the Company here are of father and son.[7] The former, Jess Cudd, had worked for the Company in its Whitmire plant for over fifty years,[8] starting at the age of thirteen. Both were doffers in the spinning department and were apparently the only two employees of the 700 in that plant who were active in Union organization. In the small mill town of 3,500 people with many supervisors, son Donald's overt activity assisting a Union organizer was known to the Company. Before Donald joined the Union, he had never received a write-up. After he became a member in the summer of 1963, he received two in fairly quick succession; shortly thereafter, he was fired. The Company claims

[7]The facts are those found by the examiner, adopted by the Board and amply supported by the record.

[8]Except for a short leave of absence in the 1930's to get married, and a period of about 18 months in the late 1920's when he ran a soft drink concession at the plant.

that Donald's work did not improve after a write-up while that of other doffers, similarly warned, did; it asserts that Donald was fired for bad piecing of ends on four or five bobbins which allegedly came from his frames. The supervisor who fired Donald claimed to have noticed the faulty work on the bobbins beginning around five p.m., but did not bring it to Donald's attention for five more hours, allegedly because he "was thinking it over" and "hated to let the boy go." The examiner observed that during this period of delay it became too late for Donald or anyone else to check the frames and the bobbins to see whether the bad work was his. As the examiner concluded, although the supervisor "hated to let the boy go," he did, the only doffer within his recollection that he had discharged.

As to Donald's father, the Company explains that three supervisors and one non-supervisory employee testified that Jess was becoming progressively more neglectful, although in his approximately fifty years of employment prior to the advent of the Union he had been written up only once, in 1948. The actual incident culminating in his discharge came three months after the Cudds formally notified the Company of their Union membership. Jess Cudd had come to work to find three frames left over from the previous shift needing doffing, in addition to six of his own. By the end of the shift, Jess had doffed all but one. Despite his protests that he had been working as fast as he could all day, one frame remained undoffed, and he was fired.

The real reason for both firings becomes all too plain when an incident shortly prior to Jess Cudd's discharge is

considered. Just before Christmas 1963, Jess had been approached by Stone, general overseer at the plant. He informed Jess that Donald, who by now had been fired, was passing out Union literature in town, and Stone suggested to Jess a plan for eliminating this problem; Jess would adopt Donald's children, quit work and collect relief payments; in that way Donald could be "run . . . off." At the same time Stone coupled his proposal with action; contrary to the Company's customary Christmas practice of giving families with children tickets exchangeable for fruit, Jess Cudd, whose son and grandchildren lived with him, was that year denied any tickets. Thus, the evidence was far more than adequate to show that both Donald and Jess Cudd were discharged not because of the quality of their work, but because of their protected Union activity.

We see no good reason to continue in this opinion with minute description of specific discharges. In some instances, the evidence of anti-union action is overwhelming; e.g., a loom fixer in the Victor plant was discharged after thirty-three years of excellent service with the Company; he received his first write-up a week after a supervisor questioned him about Union activity, in which he was actively involved, and added a veiled threat concerning whether the employee's daughter would be able to finish college. The employee was soon fired, allegedly for refusing to cooperate, the fact being that he balked at signing a confession of poor work on a job transfer slip. In others, the facts are nearer the borderline; e.g., an employee at the Black Hawk warehouse[9] was found to have been con-

[9]Garvis Powers, another case highlighted in the Company's brief as a particularly erroneous determination.

structively discharged following a reprimand by his superintendent for dealing in lottery tickets and being absent the two previous days. Whether he was provoked into a "forced quit" or quit voluntarily is a close question,[10] but there was substantial evidence to support the Board's finding that it was the former.

In almost every instance, however, involuntary discharge was conceded. In those cases, the question before the Board was not whether there existed a valid ground for discharge, but whether the stated ground was the real one. If the Board's negative answer was supported by substantial evidence, its finding should not be set aside. *See NLRB* v. *Ambox, Inc.*, 357 F. 2d 138, 142 (5th Cir. 1966). And a discharge motivated only in part by anti-union discrimination is similarly illegal. E.g., *NLRB* v. *L. E. Farrell Co.*, 360 F. 2d 205, 208 (2d Cir. 1966); *Socony Mobil Oil Co.* v. *NLRB*, 357 F. 2d 662, 663-64 (2d Cir. 1966) (*per curiam*). While a few of the findings of illegal discharge might be questionable if they stood alone, each gains color from the general pattern, particularly in the same plant. Considering the Company's unalterable opposition to the Union, the swiftness of retribution after notification to the Company of Union membership, the number of letter writers and other known Union members who were dis-

[10] The question of whether the employee was selling lottery tickets on the job was properly ignored as irrelevant to the issue of whether he quit voluntarily, the defense offered by the Company. In any event, examination of the record shows quite plainly that the lottery accusation was a pretext to cover the Company's displeasure with and sanction for the testimony the employee had given the day before as a Board witness.

charged, and the failure to show comparable discipline of non-Union employees, the Company's claim of pervasive anti-employer bias that vitiates the entire fact-finding process does not hold up. That resolution of conflicting testimony is largely—or even entirely—adverse to the Company does not prove bias. *NLRB* v. *Pittsburgh S. S. Co.*, 337 U. S. 656, 659-60 (1949); *NLRB* v. *Dixie Gas, Inc.*, 323 F. 2d 433, 437 (5th Cir. 1963); *NLRB* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 18-19 (2d Cir. 1949). Moreover, the Company's broadside charge that *"not once did the Trial Examiner or the Board find any witness for the Respondent to be telling the truth, or the conflicting testimony of witnesses for the Union and the Board to be anything but the truth!"* and always turned *"indifferently away from the explanation favorable to the Respondent,"*[11] almost entirely ignores the implications of the Board's dismissal of eight complaints against the Company. In five of the six cases which the Union has appealed, the examiner and the Board held that the General Counsel had not sustained his burden of proof. It was found that illegal discrimination based on Union activity was not the proven cause of discharge or failure to rehire, but rather some legitimate basis, e.g., poor work or absenteeism.[12] In other words, the Board did not hold that the General Counsel had failed to establish a prima facie case, but that he had failed to carry his burden of persuasion. And that finding implicitly means that the examiner believed the Company's

[11]Emphasis in original.

[12]In the sixth case, the Board found Robert Carsey had voluntarily quit, though whether he had been driven to it by his supervisors was not free from doubt.

alleged basis for its action to be the genuine one, albeit with some reservations.[13]

On the facts taken as a whole, there was far more to support the findings of the Company's illegal activity than the discharges alone. The sudden changes in pattern from permissiveness to harsh construction of work customs and rules has already been mentioned. Employees who became fearful when they saw fellow Union members fired and who went to their supervisors to say they wanted to get out of the Union were told they would have to prove they were through with it, for example, by reporting what the Union was up to. At the Company's Watts plant, a supervisor allowed a typewriter, a duplicating machine and one of its employees' services to be used to reproduce and circulate forms for withdrawing from the Union. And so it was that all but four of the forty-six Watts employees who had notified the Company of their Union membership resigned. Of the remaining four from the Union, one was out ill for a period of months and two were discharged in the ensuing weeks.

There is no room for doubt of the Board's ultimate conclusion:

> [The Company], through its plant superintendents, acting in collaboration, initiated and pursued a pattern of conduct the purpose of which was to crush the union movement. With scant regard for the means employed other than their effectiveness, it interfered with, restrained and coerced its employees in the exercise of

[13]See also the Board's handling of the testimony of Johnny Gambrell, who insisted that in his period of employment he had been absent only 8 or 10 days, and never without calling in an excuse. Tr. 4174-75, 4177-79. The examiner and the Board believed the Company's evidence, which directly conflicted with Gambrell's, finding he had been absent 28 days, 17 of which were unexcused. This led to the ultimate finding that absenteeism, not unionism, was the cause of Gambrell's discharge.

their rights under the Act, flagrantly, cynically, and unlawfully.

If there were room for such doubt, it would be demolished by the frequent evasiveness of key Company personnel in their testimony and the Company's failure to supply convincing corroborative data from records it admittedly possessed to back up some of its otherwise unsupported but crucial assertions, for example, that the discharges in dispute were just a small percentage of those comparable in the plants[14] or that the increased number of write-ups was due to higher standards, rather than being a form of interference with the unionization campaign. The Company also asserts that in some of the discharges it did not know that the employee was a Union supporter; it also claims that the increased discipline was due to unwarranted employee preoccupation with Union activity. The Board rejected these contentions and it was justified in doing so. The evidence in this record, circumstantial, *see NLRB* v. *Link-Belt Co.*, 311 U. S. 584 (1941), and direct, overwhelmingly supports the Board, taking into account whatever detracts from its weight. *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 488, 491 (1951). Compare *NLRB* v. *Getlan Iron Works, Inc.*, —— F. 2d —— (2d Cir. May 23, 1967). With the few exceptions to follow, we will not discuss the evidence before the Board any further. We have reviewed the Board's findings and the evidence to support them with respect to each of the seventy-one em-

[14]The examiner observed that the Company made the same unsubstantiated assertion—that the disputed discharges amounted to only 10% of the plant totals—in affidavits successfully opposing preliminary injunctive relief sought by the Board under §10(j) of the Act, 29 U. S. C. §160(j). See *Johnston* v. *J. P. Stevens & Co.*, 234 F. Supp. 244, 247 (E. D. N. C. 1964). See also *Johnston* v. *J. P. Stevens & Co.*, 341 F. 2d 891 (4th Cir. 1965) (*per curiam*) (affirming unreported denial of preliminary injunction where hearing was on affidavits only).

ployees discharged discriminatorily and the two denied overtime; most of the Company's charges that the evidence is insubstantial are entirely frivolous; all are without merit. We have also reviewed the six cases of discharge that are the subject of the Union's appeal. Here too, the strength of the evidence varies, but we conclude that the Board's findings are all supported by substantial evidence and hence cannot be disturbed.

Before leaving the issues dealing with substantiality of the evidence, one further matter deserves comment. As already noted, shortly after the Union appeared on the scene, the Company posted a Notice, reproduced in the margin,[15]

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[15] TO ALL EMPLOYEES

Since the Union is putting on a campaign to get in here, a good many questions have arisen with regard to the following matters. We have decided to state the Company's position on these subjects as clearly as we can for everybody alike:

(1) *This matter is, of course, one of concern to the Company. It is also, however, a matter of serious concern to you and our sincere belief is that if this Union were to get in here, it would not work to your benefit but, in the long run, would itself operate to your serious harm.*

(2) *It is our positive intention to oppose this Union and by every proper means to prevent it from coming in here.*

(3) *We would like to make it clear that it is not necessary, and it is not ever going to be necessary, for anybody to belong to the Textile Workers AFL-CIO Union, or any other Union, in order to work for this Company. The law of South Carolina guarantees this to you.*

(4) *Those who might join or belong to a Union are not going to get any advantages or any preferred treatment of any sort over those who do not join or belong to any Union.*

(5) *If anybody causes you any trouble at your work or puts you under any sort of pressure to join the Union, you should let the Company know, and we will undertake to see that this is stopped.*

(6) *No person will be allowed to carry on Union organizing activities on the job. Anybody who does so and who thereby neglects his own work or interferes with the work of others will be subject to discharge.*

Anybody who tells you anything contrary to the foregoing is not telling you the truth.

which stated its opposition to the Union. The examiner made no finding that the Notice constituted a violation of the Act, but the Board did. Much attention has been paid in the briefs to the issue of whether the Notice—particularly the prediction in the first numbered paragraph that the Union's presence would bring "serious harm"—is coercive and illegal under section 8(a)(1). Apparently the Board has frequently characterized a substantially similar notice as an instrument of coercion. E.g., *Greensboro Hosiery Mills, Inc.*, 162 N. L. R. B. No. 108 (Feb. 1, 1967); *White Oak Acres, Inc.*, 134 N. L. R. B. 1145, 1149-50 (1961). However, the Fourth and Sixth Circuits have disagreed with the Board, *see Wellington Mill Div., West Point Mfg. Co.* v. *NLRB*, 330 F. 2d 579, 583 (4th Cir.), cert. denied, 379 U. S. 882 (1964); *Surprenant Mfg. Co.* v. *NLRB*, 341 F. 2d 756, 758-60 (6th Cir. 1965). So also has the Court of Appeals for the District of Columbia, with the important qualification that "The notice may take a different coloration by virtue of the accompanying circumstances," *Amalgamated Clothing Workers* v. *NLRB*, 365 F. 2d 898, 909-10 (D. C. Cir. 1966) (2-1 decision). If we had to rule on the Notice *in vacuo* we might be particularly concerned as to the Fourth Circuit's position in the light of our present doubt whether it would not have made better sense for these petitions to have been heard by that court.[16] However, there can hardly be disagreement

[16] *Cf.* 1966 ABA Labor Relations Section 235-39, discussing a proposed "Amendment of the Act to Eliminate Races to the Circuits." The Board informed us that it uniformly takes no position as to which is the appropriate forum in controversies under 28 U. S. C. §2112(a), but when it is the first moving party, the Board

with the view of the District of Columbia Court of Appeals that the words of a notice should not be so regarded but may "take on a darker hue when viewed in the perspective of the particular setting." Whereas the Fourth Circuit found in the *West Point Mfg. Co.* case that most of the General Counsel's charges were not sustained, the "particular setting" in this case gave sufficiently dark a hue to the Notice. Since that limited basis suffices to sustain the Board's conclusion, we find it unnecessary to rule on the more general issues that have been posed.

II. The Board's Order

The order entered by the Board contains the usual cease and desist and reinstatement provisions about which there can be no valid question in the light of our holding as to

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always petitions for enforcement in the circuit where the unfair labor practices occurred.

We note that the Company in this case filed petitions for review in the Fourth Circuit, the Union filed in this court, the Fourth Circuit transferred the Company's petitions to us, and a panel of this court denied the Company's motion to transfer back. There have also been called to our attention orders of the Board or a trial examiner subsequent to the one reviewed here. We wish to make two things clear: (1) Now that we have completed a thorough review of the record, we are by no means sure that our earlier refusal to transfer was correct. The Company sought, *inter alia*, review of 71 discharges and an order extensively affecting it; the Union sought review of 6 discharges. All the discharges occurred in North and South Carolina, and the impact of the order, about which serious questions of policy are raised (see part II *infra*) will be directly felt in those states. The Board itself informed this court that it was in a "quandary" as to the circuit in which to proceed; and (2), in any event, our prior order is not controlling with regard to the proper forum to review the further Board orders, actual or potential, referred to above.

the substantiality of evidence. The Company's real objections to the order are to four less usual provisions, which the Board added to the examiner's recommendations. These require the Company: (1) to post the usual notice, but in all its forty-three plants in North and South Carolina, not only the twenty where unfair labor practices have been found; (2) to mail a copy of the notice to each employee at the forty-three plants; (3) to convene those employees during working time and have a responsible Company official read them the notice; and (4) in those plants, to give the Union access for one year to the Company's bulletin boards where employee notices are posted. The Board acknowledged that these provisions went beyond the conventional, but considered them necessary "to undo the effect of the massive and deliberate unfair labor practices committed by [the Company] in its successful efforts to frustrate organization by its employees."

We are mindful that formulation of an affirmative order to remedy an unfair labor practice is " 'peculiarly a matter for administrative competence.' " *Fibreboard Paper Products Corp.* v. *NLRB,* 379 U. S. 203, 216 (1964). Moreover, the Board has attempted to cope here with a major campaign of illegal anti-union activity, spearheaded by retaliatory discharges. It has recently been noted that:

> In regulating organizational activity, a realistic sense of priorities should lead us to recognize that an elemental fear of reprisal still poses the major threat to the free and fair elections contemplated by the act. Under these circumstances, lesser problems should not be allowed to obscure the pressing need for more effec-

> tive restraints against the clear threats and discriminatory discharges that do so much to awaken the fears of many employees.

Bok, *The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act*, 78 Harv. L. Rev. 38, 140-41 (1964). We agree with those who have studied the problem of Board remedies and have concluded that a back pay award should not be "a license fee for union busting"[17] and that remedial orders should not be disapproved merely because they are imaginative.[18]

Taking the provisions of the Board's order in turn, we do not find inappropriate the requirement that the Company post notices in all its forty-three North and South Carolina plants. Flagrant violations occurred at each of the twenty plants involved in this proceeding where organization campaigns were instituted. The area is geographically limited and contiguous; the evidence shows that the Company's policies were not determined at individual plant levels alone. That being so, including the other twenty-three Carolina plants in the order was justified "since there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies" throughout the region. See *NLRB* v. *Lummus Co.*, 210 F. 2d 377, 381 (5th Cir. 1954); *NLRB* v. *UMW, Dist 2*, 202 F. 2d 177, 179 (3d Cir. 1953). Equally important, the

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[17]Staff of Subcomm. on NLRB, House Comm. on Education and Labor, 87th Cong., 1st Sess., Administration of the Labor-Management Relations Act by the NLRB 2 (Comm. Print 1961).

[18]*See* Flannery, *The Need for Creative Orders Under Section 10(e) of the National Labor Relations Act*, 112 U. Pa. L. Rev. 69, 90-94 (1963); Bok, *supra*, 78 Harv. L. Rev. at 124-41.

Board has found that the Company's practices were "so extensive and so well-publicized that they must inevitably have had a coercive impact" at the remaining plants. Posting of Board notices at all North and South Carolina plants is therefore needed to remedy the coercive atmosphere found by the Board.

The requirement that the Company also mail the notice to the employees in these forty-three plants is equally proper here. At the outset of the Union campaign, the Company posted its own Notice, already discussed, on the bulletin boards in the plants involved in this case. But the Company obviously thought that mere posting would not be sufficient to drive home its point, because in addition it mailed a copy to each employee in the plants. The Board's notice is entitled to the same circulation for the same reasons. An employee who must scan the Board's notice hurriedly while at work, under the scrutiny of others, will not be as able to absorb its meaning and hence to understand his legal rights as one who reads it at home in a more leisurely fashion. These considerations justify the Board's exercise of its discretion in this unusual case; we do not imply—and indeed do not understand the Board to suggest—that such a mailing order is necessary or even desirable in most cases. *NLRB* v. *American Laundry Machinery Co.*, 152 F. 2d 400 (2d Cir. 1945); *cf. NLRB* v. *United Brotherhood of Carpenters*, 321 F. 2d 126, 129-30 (9th Cir.), cert. denied, 375 U. S. 953 (1963). Mailing to all forty-three plants is proper for the reasons discussed above in connection with the posting provision.

However, we have more difficulty with the last two provisions of the order. The Company characterizes the require-

ment that its officials read the Board's notice to employees as tantamount to coercing a confession from it, citing *Miranda* v. *Arizona*, 384 U. S. 436 (1966), and *Escobedo* v. *Illinois*, 378 U. S. 478 (1964); indeed, it asks of the Labor Board, " 'Upon what meat doth this our Caesar feed?' " We regard the reading requirement somewhat less emotionally and observe that the notice to be read does not in terms admit past offenses; for example, it does not contain the "cease and desist" language that so exercised Judge Learned Hand in *Art Metals Const. Co.* v. *NLRB*, 110 F. 2d 148, 151 (2d Cir. 1940), relied on by the Company.[19] On the other hand, there is an element in the requirement—not of "obeisance" as the Company claims—but of some humiliation in having Company officials personally and publicly participate. It was for this reason that the Fifth Circuit, albeit without much discussion, recently refused to enforce a similar order, *NLRB* v. *Laney & Duke Storage Warehouse Co.*, 369 F. 2d 859, 869 (5th Cir. 1966), although it had enforced such a provision in the past. *Jackson Tile Mfg. Co.* v. *NLRB*, 272 F. 2d 181 (5th Cir. 1959), enforcing *per curiam* 122 N. L. R. B. 764, 767-68 (1958); *cf. Taylor Colquitt Co.*, 47 N. L. R. B. 225, 257, enf'd, 140 F. 2d 92 (4th Cir. 1943). We have no desire to engage in humiliation of the Company; nor do we believe the reading provision was put in the order for that purpose. It was designed rather, as the Board said, "to undo the effect" of numerous and egregious unfair labor practices by insuring that the full counteracting force of

[19]The Board has long abandoned the form of notice reciting cease and desist provisions. See *NLRB* v. *Express Publishing Co.*, 312 U. S. 426, 438-39 (1941).

the remedial order would be felt by the employees. Moreover, even posting a notice may be of some embarrassment to the Company. Balancing all of these considerations, and taking note of a recent suggestion based upon empirical research,[20] we will enforce this aspect of the order only at the twenty plants where the Board found unfair labor practices, and require the Board to afford the Company the alternative, at its option, of having the notice read by Board representatives, rather than by its own officials.[21] This alternative eliminates the necessity of participation by the Company, if it so desires, and still guarantees effective communication of the Board's order to the Company's employees.

Finally, we must consider the provision giving the Union access to the Company's bulletin boards. The Union has not achieved majority status and the Board declined to find that but for the Company's conduct it would have.[22] No unique problem of access has been shown as there was in *NLRB* v. *S & H Grossinger's Inc.*, 372 F. 2d 26 (2d Cir. 1967), where no effective alternatives to access to employees on company premises were available to the union

[20]*See* Ross, *Analysis of Administrative Process Under Taft-Hartley*, 63 Lab. Rel. Rep. 132, 153 (1966); McCulloch, *An Evaluation of the Remedies Available to the NLRB—Is There Need for Legislative or Administrative Change?*, 15 Lab. L. J. 755, 767-69 (1964).

[21]We do not hold that a reading provision without this alternative would never be appropriate.

[22]Indeed the Union had asked the Board to issue a bargaining order on this theory as to 3 of the Company's plants, but the Board refused to do so, stating that it could not under the Act "where majority status has never been obtained."

in its organizational efforts. The other authorities cited by the Board for this provision are equally distinguishable. For example, *Fafnir Bearing Co.* v. *NLRB*, 362 F. 2d 716 (2d Cir. 1966), permitted access to company premises because that was the only way properly to judge a time study. Here the Board made virtually no findings concerning the issues relevant to solicitation, and made no adequate showing that the Company's bulletin boards are necessary to the Union in its organizational campaign.[23] Under these circumstances, we do not think that the Company should be forced to make them available.

With these modifications of the order, the petitions to review of the Company and the Union are denied and the Board's petition for enforcement is granted.

[23] *Cf.* Flannery, *supra* note 19, at 81.

DECREE OF THE COURT BELOW

United States Court of Appeals

FOR THE SECOND CIRCUIT

J. P. STEVENS & CO., INC.,[1]
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.
No. 30,914

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
J. P. STEVENS & CO., INC.,
Intervenor.
No. 30,391

DECREE

Before:

WATERMAN, FRIENDLY and FEINBERG,
Circuit Judges.

THESE CAUSES were submitted to this Court upon petitions to review, and a cross-petition for enforcement

[1]Respondent in the Board proceeding.

of, an order of the National Labor Relations Board dated March 22, 1966, against J. P. Stevens and Co., Inc., its officers, agents, successors, and assigns. The Court heard argument of respective counsel on May 5, 1967, and has considered the briefs and transcript of record filed in these causes. On July 7, 1967, the Court, being fully advised in the premises, handed down its opinion denying the petitions for review and granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED by the United States Court of Appeals for the Second Circuit that J. P. Stevens & Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, forcing the termination of, refusing overtime work to, or otherwise discriminating against employees in order to discourage membership in Textile Workers Union of America, AFL-CIO, or any other labor organization.

(b) Discharging or otherwise discriminating against employees for giving testimony under the Act.

(c) Engaging in surveillance of employees' activity in respect to union organization.

(d) Interrogating any employee concerning such union activity by him or other employees.

(e) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or give any assistance or support to it.

(f) Altering its working conditions for the purpose of defeating the organizational efforts of its employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of its employees.

(g) Encouraging or permitting employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

(h) Interrogating and intimidating employees concerning statements the employees gave to Board agents.

(i) Encouraging and assisting employees in withdrawing from the Union.

(j) Instructing employees to watch for and report to the Company the union activities of other employees.

(k) Requiring its employees to remove and prohibiting its employees from wearing Union insignia or threatening its employees with discharge for wearing Union insignia in its plants.

(l) Intimidating and coercing employees into withdrawing from the Union.

(m) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective

bargaining or mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which the Board has found will effectuate the purposes of the Act:

(a) Offer to the employees, whose names appear in the Appendix attached hereto, reinstatement to their former positions or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed; and make each such employee whole for any loss of pay he may have suffered by reason of the Company's discrimination against him, in the manner described in "The remedy" section of the Trial Examiner's Decision.

(b) Offer to Marshall Phillips and Jerry Dean King overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest at 6 percent per annum.

(c) Notify those employees set forth above if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Decree.

(e) Mail a copy of the attached notice marked "Appendix" to each employee and post copies at all of its plants located in the States of North Carolina and South Carolina. Copies of said notice, to be furnished by the Regional Director for Region 11 (Winston-Salem, North Carolina), shall be signed by a representative of the Company. Thereafter, a copy shall be mailed by the Company to each of its employees working in its North Carolina and South Carolina plants, and additional copies shall be posted by it and be mintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(f) Convene during working time, by departments and by shifts, all employees at the twenty plants where the Board has found unfair labor practices, and a responsible official of the Respondent, at Department Supervisor level or above, or, at the Company's option, a Board Representative, shall read to the employees the contents of the attached Appendix.

(g) Notify the said Regional Director, in writing, within 10 days from the date of this Decree, what steps have been taken to comply herewith.

STERRY R. WATERMAN
Judge, United States Court of Appeals for the Second Circuit

HENRY J. FRIENDLY
Judge, United States Court of Appeals for the Second Circuit

WILFRED FEINBERG
Judge, United States Court of Appeals for the Second Circuit

Filed: September 1, 1967.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Decree of the United States Court of Appeals, enforcing as modified an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge, force the termination of, refuse overtime work to, or otherwise discriminate against employees in order to discourage membership in or support of the Textile Workers Union of America, AFL-CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against employees for giving testimony under the Act.

WE WILL NOT engage in surveillance of employees' activities with respect to union organization.

WE WILL NOT interrogate any employee concerning such activity by them or other employees.

WE WILL NOT threaten our employees with discharge or other reprisal if they become or remain members of the Union or give any assistance or support to it.

WE WILL NOT alter our working conditions for the purpose of defeating the organizational effort of our employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of our employees.

WE WILL NOT encourage or permit employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

WE WILL NOT interrogate and intimidate employees concerning statements the employees gave to Board agents.

WE WILL NOT encourage and assist employees in withdrawing from the Union.

WE WILL NOT instruct employees to watch for and report to the Respondent the union activities of other employees.

WE WILL NOT prohibit employees from wearing Union insignia or threaten them with discharge for wearing Union insignia.

WE WILL NOT intimidate and coerce employees into withdrawing from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforesaid Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without loss of seniority

or other rights and privileges, and WE WILL MAKE THEM WHOLE for any pay they lost because of the discrimination against them with interest.

William Sibley
Edward Varnadore
Charles Capps
Arthur Wright
Charles Knight
Donald Cudd
Jessee Cudd
Billy Pressley
James Lee
Earl Roberts
William H. Varnadore
Clarence J. Poole
M. C. Richardson
Lillian Hux
Rochella Hux
Guy S. Jordan
Shirley Hobbs
Jarman Hobbs
Jimmy Wood
Dale Payne
Leroy D. Casey
Virginia Ray
Rosa Rogers
Idolene Steele
James Walden
William Aldridge
Jack Simpson
Ralph Harrison
Randall Ross
Jack Ross
Eugene Evans
John Eller
James Goodwin
Harold Robinson
Garvis Powers
Richard Dean Wike
Albert Sanders
Horace Anderson
Walter Rackley
Alvin Baker
Charles Plemmons
Charles Coley
Charlie D. Jenkins
Reginald Nicholson
Charles L. Haithcock
Lawrence M. Haithcock
Thomas Connor
William Butler
Jarvis Capps
Virginia Trotter
Doris Hicklin
John C. Carter
Grady O'Neal Fields
Burrell Knight

Carl Richmond	Thomas O. Edens
Cornell Laughter	Adolphus A. Bell
Theodore R. Adams	Artes E. Smith
Richard Bell	Lloyd R. Edwards
James Cantrell	Horace Lee Spence, Jr.
David Collins	Alex Faison
Sedric Drake	Leroy Sims
Joseph Laughter	Herman Burgess
William Looper	

WE WILL offer to Marshall Phillips and Jerry Dean King overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of Textile Workers Union of America, AFL-CIO, or any other labor organization.

J. P. STEVENS AND CO., INC.

(Employer)

Dated_____ By_____

(Representative) (Title)

NOTE: We will notify those employees set forth above if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective

Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1831 Nissen Building, 310 West Fourth Street, Winston-Salem, North Carolina 27101. (Tel. No. 723-2911, Ext. 371).

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

157 NLRB No. 90

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

Cases Nos.

11-CA-2180	11-CA-2203	11-CA-2218	11-CA-2275
11-CA-2206	11-CA-2220	11-CA-2233	11-CA-2240
11-CA-2252	11-CA-2269	11-CA-2287	11-CA-2457
11-CA-2447	11-CA-2419	11-CA-2351	11-CA-2380
11-CA-2382	11-CA-2216	11-CA-2224	11-CA-2285
11-CA-2293	11-CA-2225	11-CA-2229	11-CA-2250
11-CA-2258	11-CA-2360	11-CA-2359	11-CA-2228
11-CA-2366	11-CA-2286	11-CA-2266	11-CA-2267
11-CA-2409	11-CA-2365		

J. P. STEVENS AND CO., INC.

and

INDUSTRIAL UNION DEPARTMENT, AFL-CIO

On July 26, 1965, Trial Examiner Horace A. Ruckel issued his Decision in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affimative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in other unfair labor

practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions to the Decision and supporting briefs.

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications noted below.[1]

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[1]The Trial Examiner made certain inadvertent errors in his Decision. The Decision is hereby corrected as follows: *TXD* p. 2, line 49, Industrial Union Department is changed to Textile Workers Union of America, AFL-CIO; p. 13, line 20, the name Burnett is changed to Barnett; p. 28, line 38, the name Carter is changed to Trotter; p. 29, line 37, "making" is changed to "mixing"; p. 31, lines 6 and 7, the name Taylor is changed to Reed; p. 35, line 20, December 3, 1964 is changed to December 3, 1963; p. 41, line 55, the name Kittles is changed to Griffin; p. 45, line 42, "testimony" is changed to "action"; p. 46, line 14, "that evening," is changed to "on August 22, 1963"; p. 49, lines 1 and 8, the name Ellison is changed to Woodson; p. 54, line 14, the date October 7, 1963, is changed to October 8, 1963; p. 60, line 22, the month October is changed to August; p. 62, line 55, the name Kirley is changed to Kirby; p. 63, line 33, the date September 19 is changed to February 19; p. 74, line 8, the name Lewis is changed to Taylor; p. 76, line 23, the name Padgett is changed to Beeks; p. 86, line 54, the date May 24, 1963, is changed to July 25, 1963; p. 90, lines 12, 25, 29, 32, 36, 40, 41, 43, 44, 47, 49, the name Draughn or Draugh is changed to Draughan; p. 96, line 8, add 1963 after the date October 9; p. 104, line 4, July 6, 1963, is changed to June 6, 1963; p. 104, line 8, May 21 is changed to May 24.

8(a)(1) Conduct

The Trial Examiner inadvertently failed to find specifically that certain conduct of the Respondent, which he described, violated Section 8(a)(1) of the Act. In order to clarify his Decision, we list the incidents mentioned in his Decision, which, in context, we find violated Section 8(a)(1).[2]

Threats of reprisals, promises of benefits, and related acts of interference: TXD p. 8, lines 17-18, Wood's statement to employee Couch; p. 11, lines 10-13, Lefler's statement to employee Yearwood; p. 13, lines 2-5, Lefler's statement to employee Heath; p. 13, footnote 11a, Lefler's statement to employee Heath; p. 16, lines 13-21, Dixon's statement to employee Walden; pp. 17-19, Burnes' statement to employees Hyatt, Surrett, and Price; p. 19, lines 29-31, 42-49, Dixon's statements to employee Charles Capps; p. 28, lines 16-20, Carter's statement to employee Virginia Trotter; p. 31, lines 15-30, 40-47, Stone's statements to Jesse Cudd; p. 33, lines 17-22, Sealy's statement to employee Fields; p. 35, lines 29-32, Hartsell's statement to employee Carter; p. 37, lines 26-29, Wood's statement to employee Sims; p. 41, line 53-p. 42, line 5, Griffin's statement to the employees; p. 42, line 51-p. 43, line 18, Hunter's statement to employee Rosemond; p. 43, lines 20-30, Griffin's statement to the group of employees; p. 57, lines 9-12, Kirby's statement to employee Collins;

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[2]All page and line references are to the Trial Examiner's "slip" Decision. We hereby direct that upon publication of our Decision in the Board's volumes, the page references be converted accordingly.

p. 62, lines 50-57, Fann's statement to employee Edens; p. 67, lines 36-44, Kirby's statement to employee Brock Adams; p. 75, lines 27-32, Burrell's statement to employee King; p. 76, line 56-p. 77, line 2, Hendrix's statement to employee Jenkins; p. 78, lines 4-10, Beeks' statement to employee Jenkins; and p. 88, lines 18-23, Rawlings' statement to employee Fred Nicholson.

Interrogation: TXD p. 5, lines 31-37, by Bankhead of employee Wright; p. 8, lines 15-17, by Wood of employee Hegler; p. 8, lines 18-23, by Bankhead of employee Hegler; p. 10, lines 26-29, by Wood of employee James Lee; p. 16, lines 13-15, by Dixon of employee Walden and others; pp. 17-19, by Burns of employees Hyatt, Surrett, and Price; p. 19, lines 25-31, by Dixon of employee Charles Capps; p. 35, lines 22-29, 33-35, by Hartsell, Morgan, and Tarte of employee Carter; p. 37, lines 29-38, by Wood of employee Sims; p. 42, lines 5-18, the ruse used to get the union adherents to go to Kittles' office; p. 46, lines 14-19, by McDowell of employee Sanders; p. 47, lines 24-29, by Lollis of employee Tumblin; p. 76, lines 2-9, by Beeks of employee Payne; p. 76, lines 58-62, by Hendrix of employee Jenkins; p. 80, lines 3-6, by Pennington of employee Merrill; p. 81, lines 55-57, by Gilbreath of employee Burgess.

Surveillance: TXD p. 5, lines 33-37, Bankhead's request for Wright to engage in surveillance; p. 33, lines 20-22, Sealy's statement to employee Fields; p. 55, lines 44-49, Reese's admission to James Walker that the Respondent was engaging in surveillance; p. 80, lines 5-6, Pennington's statement to employee Merrill.

Union buttons: TXD p. 36, lines 18-33, Supervisor Tarte's demand that employee Hicklin remove her Union button.

In addition to the above violations of 8(a)(1), we find that the following conduct of Respondent was also unlawful:

(1) Employee Robinson, who worked in the Respondent's Dunean plant, was interrogated by Supervisors Stamps and Vaughn as to union matters. Stamps asked Robinson how the Union was coming and stated the "people got hurt when they fool with the union." Supervisor Vaughn asked Robinson where he had gone on Sunday, the day a union meeting was held in Charlotte. The above testimony is uncontradicted.

Employee Robinson also had a conversation with Plant Manager Pride, who told him that he "ought to leave the union alone and not mess with it" and that he was waiting for Robinson to mention it to him because he knew when Robinson had sent his authorization card to the Union. Robinson also testified that on April 10, 1964, he was called to Pride's office and asked about a statement he had given to the Board. Robinson was also asked by Pride to sign a statement for Pride, and Robinson did this. A few days later Robinson was requested by Pride to sign a second statement for him. Robinson hesitated about signing it, but after being assured by Pride that it was all right, he went ahead and signed. This statement said that the previous statement that Robinson had given to the Board agent was not true. After Robinson had signed this statement, Pride told him, "I wouldn't have

to worry about my job, that I would have a job." Pride did not deny the statements attributed to him by Robinson.

We find that the Respondent violated Section 8(a)(1) by interrogating and threatening Robinson, by creating an impression of surveillance of union activities, and by intimidating Robinson concerning the statement he had given to the Board.[3]

(2) We also find that the notice to employees[4] mailed to the employees and posted on plant bulletin boards constituted a threat to employees in violation of Section 8 (a)(1). This notice informed the employees that if "the union were to get in here it would not work to your benefit

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[3]The General Counsel excepts to the Trial Examiner's failure to discuss or find that the Respondent violated Section 8(a)(1) of the Act by interrogating and threatening Robert Carsey with respect to his union activities, and by engaging in surveillance of a union meeting attended by Carsey and others. Carsey testified that on about May 22 or 23, 1963, he was called into the office of General Overseer Cranford, where Cranford questioned him about how Carsey felt about the Union. According to Carsey, Cranford stated, "Well, I want to let you know how I feel about this [the Union]. If you're not for me you're against me, and I'll firmly get rid of everybody who's against me, because I've done it before." Cranford denied questioning Carsey or making the remarks attributed to him.

Carsey and employee Lloyd Edwards testified that at the time of a scheduled union meeting on May 25, 1963, at the Dixie Motel, they saw Respondent's Supervisors, Sidney Matthews and John Lyles, observing them from a car parked in a parking lot opposite the motel. Matthews and Lyles admitted that they were in the car but asserted that they were parked in the lot only while buying a part for a piece of farm machinery at a nearby store and that they did not engage in surveillance. In view of the credibility issues raised by the foregoing testimony, and the Trial Examiner's failure to rule thereon, and as the alleged 8(a)(1) conduct would only be cumulative, we do not pass upon the above issues.

[4]This notice is reproduced on page 3 of the Trial Examiner's Decision.

but, in the long run would itself operate to your serious harm." As the Respondent immediately thereafter embarked upon its campaign of coercive conduct, it is plain that the Respondent was forcefully bringing home to the employees that the "serious harm" was not to be long delayed.

(3) Finally, we find that the Respondent violated Section 8(a)(1) by posting the names of the union adherents on plant bulletin boards. The Respondent could give no justifiable reason for such posting. The record shows that many of the employees whose names were posted were shortly thereafter discharged for their union activities. The record also shows that when employees informed the Respondent of their withdrawal from the Union, the Respondent scratched their names from the list. In the light of these circumstances, and in the context of the flagrant unlawfulness of the Respondent's antiunion campaign, it is clear to us, and we find, that the posting was an intimidatory tactic which was deliberately calculated to, and did, coerce and restrain employees in the exercise of their Section 7 rights.

8(a)(3)

The Trial Examiner found that the Respondent discharged 69 employees in violation of the Act.[5] We agree with the Trial Examiner that these employees were un-

[5]The Trial Examiner inadvertently failed to make specific findings that the following employees were discharged in violation of Section 8(a)(3): Jack Simpson, James Walden, Donald Cudd, Jesse Cudd, John Eller, Eugene Evans, Harold Robinson, Garvis Powers, David Collins, James Cantrell, M. C. Richardson, Lillian Hux, and Guy Jordan. We hereby find that these employees were discharged in violation of Section 8(a)(3) of the Act. We further find that Garvis Powers' discharge was also in violation of Section 8(a)(4).

lawfully discharged. In addition, contrary to the Trial Examiner, we find that employees Leroy Sims and Herman Burgess were also unlawfully discharged or denied reinstatement.

(1) Leroy Sims, the record shows, had worked 19 years for the Respondent at the time of his termination on January 30, 1964. Before the latter date, Sims had joined the Union, his name had been posted and, after several of his fellow union members had been discharged, he spoke to Plant Superintendent Wood about getting out of the Union. Sims told Wood that he was through with the Union. Wood asked Sims if he would name the employees who belonged. Sims declined to do this. Wood also told Sims, as the latter testified, "that as long as I wasn't going to have anything to do with the union, and run my job right, I had a job there as long as I wanted it." Sims continued to work without incident until the middle of January, when Sims was asked by Wood whether he had given a statement to the Board accusing Wood of promising employees benefits to persuade them to withdraw from the Union. Sims said he had given a statement to a Board agent, but insisted that it did not incriminate Wood. Wood replied that he would know next month, referring to the time when the hearing in this case was to commence. A few days later Sims, who worked in the cardroom running roller frames, reported for work and found some fly frames stopped off and left in a condition which affected his earnings since he was paid by the hank. This happened several times and, although Sims protested to Supervisor Temple, Temple replied that there was nothing

he could do. Sims became disgusted and, on January 30, he told Temple to give him his pay check, it being payday. Sims explained to Temple that he would come back and see General Overseer Bankhead, which he did on Saturday morning, February 1. When Bankhead and Sims talked on Saturday, Bankhead told Sims to return on Monday. Pursuant to Bankhead's request, Sims came back on Monday and was told by Bankhead to "come back prepared to go to work Thursday."[6] The next day, February 4, the Respondent received a copy of Sims' affidavit.[7] When Sims returned on Thursday, he was told that there was no job available for him.

The Trial Examiner concluded that the evidence did not support a finding that Sims was constructively discharged on January 30. He did not consider the General Counsel's alternative contention that, even assuming Sims was not constructively discharged on January 30, he was unlawfully denied reemployment on February 6. We find this latter contention has merit for the following reasons:

Sims had been a satisfactory employee for many years. Although he had had a disagreement with Temple, his immediate supervisor, and had walked out, Bankhead, ac-

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[6]When Sims returned on Monday Bankhead said, according to Sims' credited testimony: " 'Come back prepared to go to work Thursday; he says, 'I may have to work you a while longer on the second shift,' and I said, 'Well, Mr. Temple might not want to work me any more, after I walked out,' and he says, 'Well, we've got that straightened out, he ain't got no objections,' he says, 'I talked with him.' "

[7]This statement was produced in the 10(j) injunction proceeding.

cording to the testimony of Sims which we credit,[8] did not hold this against him but met Sims' request for employment elsewhere with a promise to put him to work on Thursday, February 6. When Sims did report as requested, Bankhead told him that there was no job. In the interval between the promise of a job and its fulfillment, Respondent became aware of Sims' affidavit to a Board agent which was adverse to Respondent's case. In view of Respondent's animus towards the Union, its adherents and supporters, the inference is inescapable that Respondent withdrew its job offer to Sims because of the contents of the affidavit which established in Respondent's estimation that Sims was prounion despite his announced withdrawal from that organization. We so find. We further find that by denying Sims employment on and after February 6, Respondent violated Section 8(a)(4) as well as 8(a)(3) and (1) of the Act.

(2) Herman Burgess had worked 17 years for the Respondent at its Piedmont Plant at the time he was terminated on April 27, 1964. During this time, Burgess had worked at several jobs in the cardroom, including a stripping job and as a sweeper. Burgess joined the Union in March 1964, before the Respondent had opened its new Piedmont Plant. Prior to the new plant opening, Supervisor Gilbreath told the employees at the old plant "there

[8]Bankhead denied that he had offered Sims a job on Saturday, February 1, but did not testify as to the conversation he had had with Sims on Monday, February 3. To the extent that Bankhead's testimony contradicts Sims, we do not credit it and note that in conjunction with other matters, Bankhead's testimony was discredited by the Trial Examiner.

would be jobs there for all of us." Burgess was transferred to the new plant and ran a bobbin machine in the cardroom for about 3 weeks before he was terminated.

A few days prior to his termination, Burgess was approached by Supervisor Gilbreath who asked him whether the Union men had been to see him and whether he would sign a card. Burgess responded by asking the same question of Gilbreath. Gilbreath also told Burgess he would be fired if he signed a card. When Burgess came to work on April 27, he was told to go home. The next day Burgess returned and was told by Supervisor Gilbreath that he was laid off. Burgess' uncontradicted testimony was that he had seniority over the people who were running the carding machines. Burgess also stated that after his layoff, employee Woodson, who was junior to him, ran the bobbin machine that he had been running.

The Trial Examiner found that the General Counsel had not met his burden of proving that Burgess had been discriminatorily discharged. We do not agree. Burgess was a long-time employee who was capable of, and had performed, a number of different jobs in the carding room, in addition to his regular job of cleaner. At the time of his discharge, he was in fact operating a bobbin machine and had seniority over many other carding machine operators, including his replacement. At the time of the opening of the new Piedmont plant, Burgess together with other employees had been promised jobs at the new plant. On April 27, approximately a month after the new plant opening, without forewarning Burgess was abruptly laid off. Respondent did not call any witnesses in an attempt

to justify Burgess' discharge. It is significant that the discharge followed shortly after Burgess was interrogated as to union activities and threatened with discharge if he signed a union card. We find that, in view of Respondent's union animus, its discharge of other employees for engaging in union activities, the timing of the discharge immediately after the interrogation and threat, and Respondent's failure to call witnesses to justify the discharge, Respondent discharged Burgess for discriminatory reasons in violation of Section 8(a)(3).

(3) We also modify the Trial Examiner's Decision in the following respects:

On page 28 of the Trial Examiner's Decision, lines 54-56, he states that he does not credit Supervisor Carter's testimony, absent corroboration. Contrary to the Trial Examiner, Carter's testimony was partially corroborated by Supervisor Morgan. Morgan also testified, however, that the mixed fillings he observed before Virginia Trotter's discharge could have been caused by someone other than Trotter, and he did not corroborate Carter as to the existence of mixed fillings shortly after her name was posted as a union adherent. Accordingly, we conclude, in agreement with the Trial Examiner, that Trotter was discharged for her union activities.

On page 40 of his Decision, line 42, the Trial Examiner states that Supervisor Haddon was not asked whether he had knowledge of the union status of employees Eller and Evans. Haddon was asked this question and denied having such knowledge. We correct this inadvertent error and note that the Trial Examiner relied upon other evi-

dence of Company knowledge. The Trial Examiner also stated that Haddon testified that he could not remember any employee having been discharged for horseplay. Haddon did testify, however, that he knew of six employees who were discharged for horseplay, but on cross-examination he had difficulty in naming them. The two he did name were discharged for more serious offenses. Modifying the findings accordingly, we nevertheless conclude that the evidence supports the Trial Examiner's findings that these two employees, Eller and Evans, were discharged for their union activities.

The Trial Examiner found on pages 65-66 of his Decision that employee Richmond was discharged for his union activities. We agree and we note that the record contains additional evidence to support this finding. Thus, the print roll had been damaged previously without anyone having been discharged, and employee Edwards, Richmond's replacement, damaged the print roll after Richmond was discharged. On this occasion, Edwards testified that it was necessary to send the print roll away to be repaired and that he received no reprimand or write-up for the damage, which he did.

With respect to the employment history of employee Rochella Hux, discussed on page 85 of his Decision, the Trial Examiner stated that a write-up given Hux on July 18, 1963, was the first she had received for low production. Supervisor Griffin testified, however, that Hux also had received a write-up for low quantity on November 27, 1962. Although we note that the Trial Examiner did not discuss this earlier write-up, we find that this does not

detract from his conclusion that Rochella Hux was discharged for her union activity. Rather, the write-up in November 1962 actually supoprts the Trial Examiner's finding that the Respondent was aware of Hux's low production ever since she was hired, but she was not discharged until she was seen receiving a union leaflet in July 1963. We agree that Rochella Hux was discharged for her union activity.

On pages 86-87 of his Decision the Trial Examiner discusses the union activity of employee Leroy Casey. He states, "[Supervisor] Rawlings * * * saw him [Casey] at the union hall on May 14." The record shows that, although Casey drove past the union hall in his car, he did not stop at the hall. While the above evidence may not be used to show the Respondent's knowledge of Casey's union activity, there is sufficient other evidence in the record to support a finding that the Respondent was aware of it. Thus, as found by the Trial Examiner, Casey solicited the membership of three diaper folders, one of whom was the wife of a supervisor. Casey was also cautioned by a floorlady about talking about the union on the job. Finally, although not discussed by the Trial Examiner, the record shows that Casey had solicited union memberships in the restroom. Accordingly, we agree with the Trial Examiner that the Respondent knew of Casey's union activity and discharged him for that reason.

In discussing the details of the write-ups received by employee Horace Spence, the Trial Examiner, at page 90 of his Decision, states, "On June 4 [Supervisor] Draughan wrote up Spence for tying two doubles in a warp. Then

on June 6, the last night he worked he tied doubles in the last warp he worked on before the end of the shift according to Draughan." Draughan's testimony was that the June 4 write-up was for tying *ten* doubles in one warp and *some* in another, and not just two doubles as reported by the Trial Examiner. Draughan also testified that on Spence's last night Spence not only tied doubles in the last warp he worked on, as found by the Trial Examiner, but that he also hooked up a loom wrong and tied doubles in another loom. We are not persuaded, however, that these errors not discussed by the Trial Examiner bolster the Respondent's claim that Spence was discharged for poor work. We find it significant, as did the Trial Examiner, that there was no showing that any of Spence's errors resulted in the production of seconds. Accordingly, we agree with the Trial Examiner that the Respondent's reason for Horace Spence's discharge was a pretext, and that the real reason was his union activity.

At page 94 of his Decision, the Trial Examiner discussed the circumstances surrounding the discharge of Jarman Hobbs. He noted that, according to the testimony of employee Britt, Britt complained to Supervisor Sims once, on the day of Hobbs' discharge, that Hobbs was importuning Britt to join the Union while Britt was at work. The testimony of employee Jones is that on one occasion, several weeks before Hobbs' discharge, Jones complained to Sims that Hobbs had asked Jones to sign a card while Jones was at work. The Trial Examiner did not discuss Jones' testimony. Assuming, *arguendo*, that Jones did speak to Sims about Hobbs, this does not detract from the

Trial Examiner's finding that Hobbs had never received a write-up for interfering with another person's work, and that Hobbs was discharged without any investigation or any attempt to obtain Hobbs' version of the matter. We conclude, as did the Trial Examiner, that Jarman Hobbs was discharged for his union activity.

The Respondent contends that, in discussing the Respondent's knowledge of employee Reginald Nicholson's union activity, at page 88 of his Decision, the Trial Examiner incorrectly assumed that Supervisor Rawlings had reported Rawlings' observation of the Union meetings to Plant Superintendent Lee. Contrary to the Respondent, we believe that such an inference is reasonable in view of the close contact between the two supervisors as demonstrated by the record, the fact that employees Bell, Nicholson, Casey, and Edwards, who attended the meeting, were discriminatorily discharged, and in view of the Trial Examiner's finding that the Respondent was engaged in a systematic attempt to rid itself of union adherents.

Remedy

In its brief, the Union asserts that this case is unique and requests the Board, as part of its remedy for the 8(a)(1) and (3) violations, to issue a bargaining order covering Respondent's three Great Falls plants. We are not persuaded that such an order is appropriate. Although there is a possibility that, but for Respondent's unfair labor practices, the Union might ultimately have secured majority status, it has not done so. In view of the majority principle in Section 9(a) of the Act, we do not

believe that the policies of the Act require or even permit the issuance of a bargaining order where majority status has never been attained.[9]

We do agree, however, that the conventional reinstatement, backpay, and posting of notice requirements for 8(a)(3)[10] and (1) violations are not completely adequate to undo the effect of the massive and deliberate unfair labor practices committed by Respondent in its successful

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[9] *H. W. Elson Bottling Company,* 155 NLRB No. 63.

[10] In finding that Shirley Hobbs was discharged for her union activity, and in ordering that she be reinstated, the Trial Examiner failed to discuss an incident that occurred in Supervisor Griffin's office at the time of her discharge. Griffin informed Hobbs that she was being discharged for miscounting napkins and handed her a pay voucher and check. Hobbs then said, "Give me the damned thing," or "give me my damned check," and yanked the check out of Griffin's hand. Hobbs looked at the check and then gave Griffin a slap on the face. Finally, Hobbs left, slamming the office doors. While we do not condone this kind of employee misconduct we do not believe that it was sufficiently serious, in all the circumstances, to warrant a denial of reinstatement and backpay. Thus, there is no evidence that prior to, or after, the ineident in Griffin's office Hobbs made intemperate remarks or engaged in physical violence. Just prior to the incident in question, Griffin had announced Hobbs' discharge, which was discriminatorily motivated. With good justification, therefore, Hobbs believed she had been treated unfairly. The Fourth Circuit Court of Appeals recently held in similar circumstances that:

> An employer cannot provoke an employee to the point where she commits such an indiscretion as is shown here and then rely on this to terminate her employment. * * * The more extreme an employer's wrongful provocation the greater would be the employee's justified sense of indignation and the more likely its excessive expression. * * * [R]efusal to reinstate her would put a premium on the employer's misconduct.

N. L. R. B. v. M & B Headwear Co., 349 F. 2d 170 (C. A. 4); Cf. *Local 833, UAW v. N. L. R. B. (Kohler Co.),* 300 F. 2d 699 (C. A. D. C.). Accordingly, we agree with the Trial Examiner that Shirley Hobbs should be reinstated with backpay. *Product Engineering and Manufacturing Corp.,* 133 NLRB 1375, 1392, footnote 34.

efforts to frustrate organization by its employees. Thus, we have found that the Respondent discharged 71 employees and discriminated in assigning overtime to 2 employees, in violation of Section 8(a)(3); that it discriminated against 2 employees in violation of Section 8(a)(4); that it made at least 23 threats of reprisal and promises of benefit to employees; that it engaged in at least 17 acts of interrogation of employees about their union activities; that it engaged in four acts of surveillance and in another instance created the impression of surveillance of union activities; and that it posted threatening notices on plant bulletin boards, all in violation of Section 8(a)(1). Accordingly, we shall require Respondent, in addition to posting the notice to employees attached hereto at all places where notices to employees are customarily posted, to mail copies thereof, after it has been signed by Respondent's representative, to each of its employees in its plants in the States of North and South Carolina.[11] We shall also require Respondent, upon request of the Union to give the Union and its representatives reasonable access, for a period of 1 year beginning with the issuance date of this Decision to its bulletin boards and other places where notices to employees are customarily posted. Finally, to make further effective its notification to employees of its intent to remedy the unfair labor practices committed and to refrain from committing other unfair labor practices in the future, we shall require Respondent to convene during working time meetings of employees in the

[11] *H. W. Elson Bottling Company, supra.*

various departments of the North and South Carolina plants and read to them a copy of the attached notice.[12]

Conclusions of Law

1. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By discriminating in regard to the hire or tenure of employment or any term or condition of employment of those employees whose names appear in the Appendix attached hereto, and Marshall Phillips and Jerry Dean King, thereby discouraging membership in the above-named Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By discharging an employee because he had given testimony under the Act, Respondent violated Section 8(a)(4) of the Act.

5. By engaging in interference, restraint, and coercion, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. Respondent did not violate the Act by discriminating with respect to the hire and tenure of employment of

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[12]We have also required the Respondent to mail copies of the Notice To All Employees to insure that those employees not present when the notice is read during working hours will be adequately informed of the Respondent's intention to refrain from engaging in unfair labor practices.

Shirley Bowers, Ollie Varnadore, Basil Trotter, Johnny Gambrell, Thomas Bishop, James Dyer, Robert Carsey, and Gordon Ray.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER[13]

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, J. P. Stevens and Co., Inc., Rock Hill and Greenville, South Carolina, and Roanoke Rapids, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, forcing the termination of, refusing overtime work to, or otherwise discriminating against employees in order to discourage membership in Textile Workers Union of America, AFL-CIO, or any other labor organization.

(b) Discharging or otherwise discriminating against employees for giving testimony under the Act.

(c) Engaging in surveillance of employees' activity in respect to union organization.[14]

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[13]The Trial Examiner's proposed Order contained paragraphs ordering the Respondent to cease threatening employees with a shutdown and interrogating job applicants. We do not adopt these paragraphs because he made no findings that the Respondent had engaged in such conduct.

[14]The Trial Examiner inadvertently left these paragraphs out of his proposed "Notice to All Employees". We have corrected this omission.

(d) Interrogating any employee concerning such union activity by him or other employees.

(e) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or give any assistance or support to it.

(f) Altering its working conditions for the purpose of defeating the organizational efforts of its employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of its employees.

(g) Encouraging or permitting employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

(h) Interrogating and intimidating employees concerning statements the employees gave to Board agents.

(i) Encouraging and assisting employees in withdrawing from the Union.

(j) Instructing employees to watch for and report to the Respondent the union activities of other employees.

(k) Requiring its employees to remove and prohibiting its employees from wearing Union insignia or threatening its employees with discharge for wearing Union insignia in its plants.

(l) Intimidating and coercing employees into withdrawing from the Union.

(m) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Textile Workers Union of America, AFL-CIO, or any other labor organ-

ization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Offer to the employees, whose names appear in the Appendix attached hereto, reinstatement to their former position or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed; and make each such employee whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, in the manner described in "The remedy" section of the Trial Examiner's Decision.

(b) Offer to Marshall Phillips and Jerry Dean King overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest at 6 percent per annum.

(c) Notify those employees set forth above if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Order.

(e) Mail a copy of the attached notice marked "Appendix"[15] to each employee and post copies at all of its plants located in the States of North Carolina and South Carolina.[16] Copies of said notice, to be furnished by the Regional Director for Region 11, shall be signed by a representative of the Company. Thereafter, a copy shall be mailed by the Company to each of its employees working in its North Carolina and South Carolina plants, and additional copies shall be posted by it and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

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[15]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

[16]Respondent excepts to the Trial Examiner's recommendation that it be required to post a notice at all of its plants located in North Carolina and South Carolina even though not all of them are involved in these proceedings. We find no merit in this exception as the unfair labor practices in these cases were so extensive and so well publicized that they must inevitably have had a coercive impact on employees of Respondent's other plants in the area. We find that this posting is necessary in order that such employees may be reasonably secure in the exercise of their Section 7 rights and to remedy this atmosphere of fear. For the same reasons, we order the Company to mail copies of the notice to these employees.

Company to insure that said notices are not altered, defaced, or covered by any other material.

(f) Upon request of the Union, immediately grant the Union and its representatives reasonable access, for a 1-year period beginning with the issuance date of this Decision, to its bulletin boards and all places where notices to employees are customarily posted.

(g) Convene during working time, by departments and by shifts, all its employees, and a responsible official of the Respondent, at Departmental Supervisor level or above, shall read to department employees the contents of the attached Appendix.

(h) Notify the Regional Director for Region 11, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D. C., March 22, 1966.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge, force the termination of, refuse overtime work to, or otherwise discriminate against employees in order to discourage membership in or support of the Textile Workers Union of America, AFL-CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against employees for giving testimony under the Act.

WE WILL NOT engage in surveillance of employees' activities with respect to union organization.

WE WILL NOT interrogate any employee concerning such activity by them or other employees.

WE WILL NOT threaten our employees with discharge or other reprisal if they become or remain members of the Union or give any assistance or support to it.

WE WILL NOT alter our working conditions for the purpose of defeating the organizational effort of our employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of our employees.

WE WILL NOT encourage or permit employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

WE WILL NOT interrogate and intimidate employees concerning statements the employees gave to Board agents.

WE WILL NOT encourage and assist employees in withdrawing from the Union.

WE WILL NOT instruct employees to watch for and report to the Respondent the union activities of other employees.

WE WILL NOT prohibit employees from wearing Union insignia or threaten them with discharge for wearing Union insignia.

WE WILL NOT intimidate and coerce employees into withdrawing from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without loss of seniority or other rights and privileges, and WE WILL MAKE THEM WHOLE for any pay they lost because of the discrimination against them with interest.

William Sibley
Edward Varnadore
Charles Capps
Arthur Wright
Charles Knight
Donald Cudd
Jessee Cudd
Billy Pressley
James Lee
Earl Roberts
William H. Varnadore
Clarence J. Poole
M. C. Richardson
Lillian Hux
Rochella Hux
Guy S. Jordan
Shirley Hobbs
Jarman Hobbs
Jimmy Wood
Dale Payne
Leroy D. Casey
Virginia Ray
Rosa Rogers
Idolene Steele
James Walden
William Aldridge
Jack Simpson
Ralph Harrison
Randall Ross
Jack Ross
Eugene Evans
John Eller
James Goodwin
Harold Robinson
Garvis Powers
Richard Dean Wike

Albert Sanders
Horace Anderson
Walter Rackley
Alvin Baker
Charles Plemmons
Charles Coley
Charlie D. Jenkins
Reginald Nicholson
Charles L. Haithcock
Lawrence M. Haithcock
Thomas Connor
William Butler
Jarvis Capps
Virginia Trotter
Doris Hicklin
John C. Carter
Grady O'Neal Fields
Burrell Knight
Carl Richmond
Cornell Laughter
Theodore R. Adams
Richard Bell
James Cantrell
David Collins
Sedric Drake
Joseph Laughter
William Looper
Thomas O. Edens
Adolphus A. Bell
Artes E. Smith
Lloyd R. Edwards
Horace Lee Spence, Jr.
Alex Faison
Leroy Sims
Herman Burgess

WE WILL offer to Marshall Phillips and Jerry Dean King overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of Textile Workers Union of America, AFL-CIO, or any other labor organization.

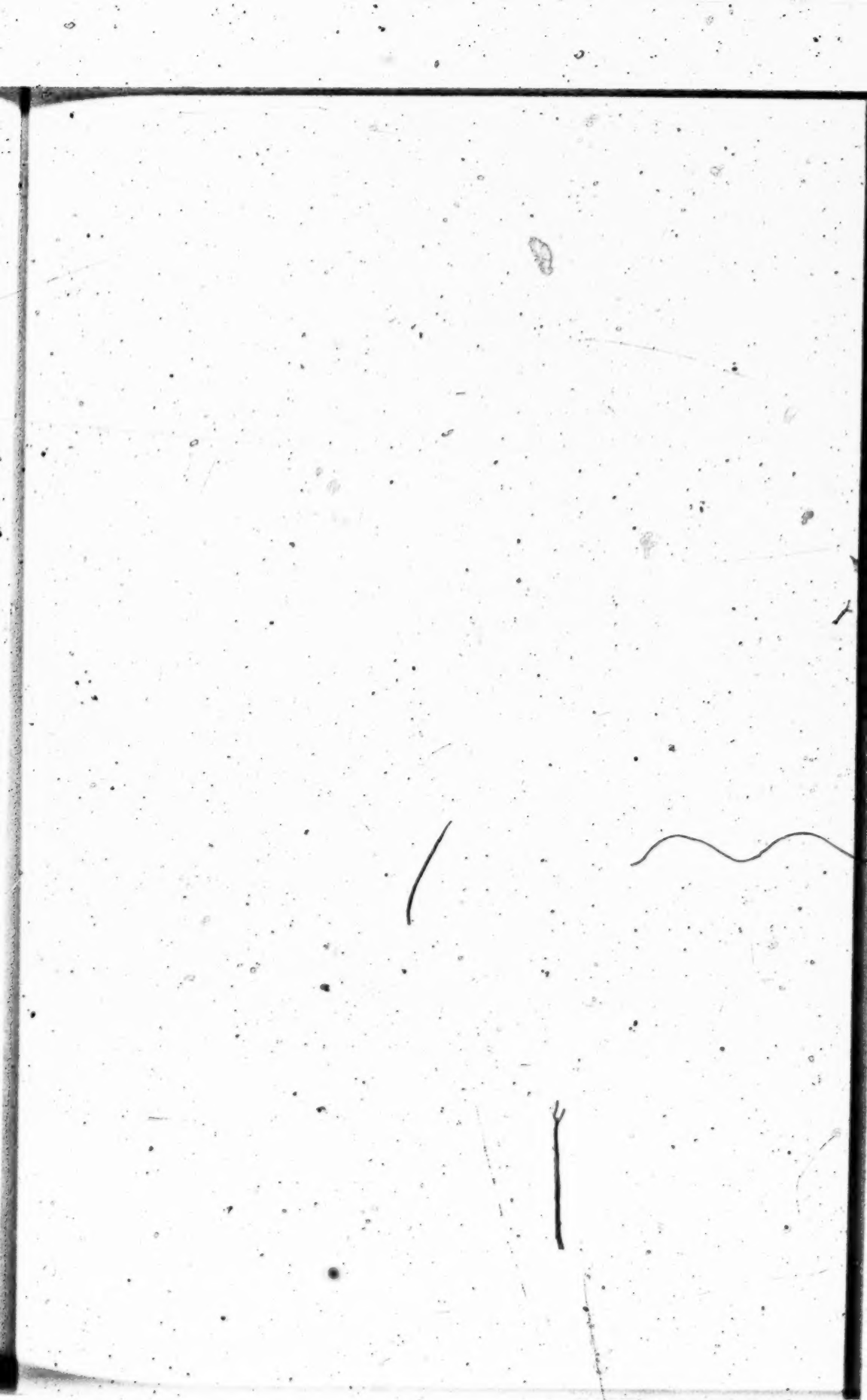
J. P. STEVENS AND CO., INC.
(Employer)

Dated_____ By_____
(Representative) (Title)

NOTE: We will notify those employees set forth above if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1831 Nissen Building, 310 West Fourth Street, Winston-Salem, North Carolina 27101 (Tel. No. 723-2911, Ext. 371).



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Statute: Page

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*):

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Section 8(a)(1) ---------- 21, 22, 24, 25, 30
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Section 8(a)(4) ---------- 21, 22, 24, 30
Section 10(c) ---------- 25, 31
Section 10(e) ---------- 31

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 684

J. P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 380 F. 2d 292. The Board's decision and order (Pet. App. 39a-66a; J.A. 4-29, 47-271)[1] are reported at 157 NLRB 869.

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[1] "J.A." refers to the Joint Appendix printed for the use of the court below. "Tr." refers to the transcript of testimony in the Board proceeding; "GCX" refers to the General Counsel's Exhibits, "RX" to those of the Company, and "CPX" to those of the Union. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

JURISDICTION

The decree of the court of appeals was entered September 1, 1967 (Pet. App. 28a-33a). The petition for a writ of certiorari was filed on October 5, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's findings that the employer discharged 71 employes and denied overtime work to two other employees because of their union activities, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act.

2. Whether, in the circumstances of this case, the Board properly found that the employer restrained his employees in the exercise of their organizational rights by posting notices in some of his plants, and sending copies thereof to all employees at these plants, warning that a union would "operate to your serious harm".

3. Whether, as a remedy for the extensive unfair labor practices in this case, it was reasonable to require the employer (a) to post an appropriate notice in all of its plants in North and South Carolina and to mail a copy thereof to each employee at these plants, and (b) to read or permit the notice to be read to the employees at those of the plants where the unfair labor practices were actually committed.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, et seq.), are set forth in the Appendix, *infra* pp. 30-31.

STATEMENT

A. The Board's Findings of Fact

1. *The Company's response to the Union's organizational campaign*

The Company has 43 textile plants located throughout North and South Carolina. In May 1963,[2] the Union[3] began a concerted campaign to organize the employees at 20 of the plants—located in Rock Hill and Greenville, South Carolina, and Roanoke Rapids, North Carolina (J.A. 49-50; Tr. 79-81, 862, 953-954). The Company reacted to this organizational drive by posting a notice on the bulletin boards in these plants, stating, in part (J.A. 50; GCX 2(a), Tr. 862):

> TO ALL EMPLOYEES
>
> Since the Union is putting on a campaign to get in here, a good many questions have arisen with regard to the following matters. We have decided to state the Company's position on these subjects as clearly as we can for everybody alike:
>
> (1) This matter is, of course, one of concern to the Company. It is also, however,

[2] All dates are in 1963 unless otherwise stated.

[3] Textile Workers Union of America, AFL-CIO, a party in the court of appeals proceeding.

> a matter of serious concern to you and our sincere belief is that if this Union were to get in here, it would not work to your benefit, but, in the long run, would itself operate to your serious harm.
>
> * * * *

The notice went on to declare the Company's intention to use every "proper means to prevent" the Union from coming in, and added that union adherence would not insulate employees from discharge for cause (J.A. 50-51). In addition to posting this notice, the Company sent copies of it to the employees, along with a covering letter emphasizing the "vital importance" of the subject (J.A. 51; GCX 2(b), Tr. 183, 953).

Despite the Company's avowed opposition to the organizational campaign, the Union succeeded in signing up a substantial number of employees during the spring and summer months of 1963. Pursuant to Union direction, most of the employees in the Rock Hill and Greenville plants sent joint letters to the managers of their plants informing them of their union affiliation and expressing the intention "to help in every way that is legal to get [their] fellow workers to do the same" (J.A. 51; GCX 6(a)). When the Company learned of an employee's union membership, it sent a reply stating that it was "taking due note" of the fact that he had joined the Union and "that your signing up with the union does not give you any immunity of any sort * * *." (J.A. 52; GCX 6(b)). At its Rock Hill and Greenville plants the Company also posted on the bulletin boards the names of those

employees from whom it had received Union participation letters, together with copies of its reply (J.A. 52; Tr. 162-163, 954, 995-998). As employees withdrew from the Union, the Company crossed their names from the posted lists, thus keeping a running account of the progress of the Union's organizational efforts (J.A. 53; Tr. 164, 172-179, GCX 7(b), 29).

2. *The discharges of and denial of overtime work to 73 union supporters*

But this was not the limit of the Company's response to the union drive and to the employees' expression of support for the Union. The Company soon initiated a massive crackdown against the union adherents "to crush the union movement" (J.A. 260). Prior to the organizing campaign, the Company had been tolerant, even lenient, in such matters as absences, work breaks, transfers, and rehirings (J.A. 255-261). Only infrequently did the Company issue formal written reports of the employee reprimands, known as Personnel Action Reports or write-ups, and then only when misconduct was serious or repeated. With the advent of the Union, however, this attitude changed. Write-ups, quickly followed by discharge, became common for union adherents. Incidents or activities that had previously been overlooked now occasioned speedy and severe disciplinary action (J.A. 246-249, 251-261; Tr. 962-963, 1158-1159, 1173-1174, 1510, 1523-1524, 1545-1547, 1948-1940, 4003, 4004, 4017-4021).

In the months following the inception of the Union's organizing drive, the Company discharged 71

employees and deprived two others of overtime work. All of these employees had actively supported the Union before this disciplinary action was taken. We do not consider it necessary or appropriate at this stage in the proceedings to undertake to detail all of the evidence submitted at the lengthy Board hearings (see Pet. App. 3a, n. 3) that supports the Board's findings as to each of these 73 employees.[4] Instead, a summary of the evidence concerning some of these employees, illustrating the manner in which the Company dealt with the employees who chose to support the Union, will demonstrate why plenary review of the substantiality of the evidence is not warranted.

a. *Republic Plant No. 2*

Arthur Wright had been employed for 6 years, and had never received a written reprimand (J.A. 55; Tr. 403, 410-411). At the time of his discharge, he was working in the spinning department on the third shift, where his job was to clean the bobbins on the spinning frames and to sweep the floor (J.A. 54; Tr. 404). Wright joined the Union in June, shortly after the organizational campaign began (J.A. 54; Tr. 405). During the week of July 4, he was called away from his work area by his supervisor, Alvin Bankhead, and asked how he felt about the Union and whether he would sign a union card (J.A. 54; Tr. 404-405). Bankhead asked Wright to keep him informed of the Union's progress and Wright agreed to do so (J.A.

[4] The evidentiary findings relating to each of the 73 employees are set out at J.A. 10-14, 53-242.

54; Tr. 406). Shortly thereafter, Bankhead asked Wright whether he had "heard anything", and Wright replied that he had not (J.A. 54; Tr. 406-407).

On August 13, after being informed of their union membership, the Company sent a letter to Wright and his fellow union adherents, including Idolene Steele and Charles Knight, stating that it was "taking due note" of their avowed union membership and of their intention to organize the Company's plants. A copy of this letter was posted on the bulletin boards on August 17 (J.A. 54; Tr. 407). On August 18, a half hour before the end of his shift, Wright was taken by Bankhead to an area of the floor where 35 to 40 cartons had been piled. Bankhead shoved some of them aside, revealing a considerable amount of accumulated lint between the cartons (J.A. 54; Tr. 410).[5] Bankhead then showed Wright a bobbin which allegedly had not been cleaned, and summarily discharged him. Since there was sufficient time left on his shift to clean the bobbin, Wright asked what he should do about it, but Bankhead replied that neglecting to clean a bobbin was "an automatic termination" (J.A. 54-55; Tr. 410, 1752-1753). Two other employees, Carroll Davis and Walter Holman, the cleaners on the first and second shifts, shared with Wright the equal responsibility for keeping the area clean. But their names were not posted as union members, and they were not discharged (J.A. 55; Tr. 1746-1747).

[5] Bankhead testified that this amount of lint could have been accidentally blown there by a blower which was used in cleaning the spinning frames (J.A. 54; Tr. 1747).

Idolene Steele, Wright's car pool partner and another known union adherent, was discharged the same night (J.A. 56; Tr. 423, 468, 1733). She had been employed by the Company for a year as a spinner, after working for 17 years in the same capacity at other mills (J.A. 56; Tr. 420). Steele occasionally did clean-up work and, on the night of August 18, Bankhead assigned her to clean the sides of some 29 spinning frames (J.A. 56; Tr. 421-422). The customary practice of the regular cleaners, whose full time was used for the task, was to clean half of the frames one night and leave the other half for the following night (J.A. 56; Tr. 426, 433-434, 474-475). At the end of her shift, Bankhead showed Steele 7 frames whose sides she had not cleaned, and told her she was discharged (J.A. 56; Tr. 423). During his four years in the department, Bankhead concededly had not discharged any other employee for improper cleaning (J.A. 56; Tr. 1734, 1741). Steele had never received a written complaint from any of her supervisors (J.A. 56; Tr. 426, 1791).

Charles Knight had worked for the Company on the third shift in the card room for 11 years prior to his discharge (J.A. 56; Tr. 372). He was active in the Union's campaign from its inception, and the first two union meetings were held in his home (J.A. 57; Tr. 373). His name was posted on the plant bulletin board on August 17 (J.A. 57; Tr. 374). On August 18, Supervisor Bill Coker discharged him, offering the explanation that he had not tied together the ends of the finished, drawn material which he was

then working on (J.A. 57; Tr. 380). The finished material, about the thickness of a finger, feeds into a can as it comes off the finishing machine (J.A. 57; Tr. 387). In the past, when the material fell into a small can, the operator was supposed to tie the end of the material coming off the machine to the material already in the can. However, when these cans were replaced by larger ones two years earlier, Coker had instructed Knight not to piece the ends together when the can was more than half full of material (J.A. 57; Tr. 377, 390), and Knight worked in that fashion thereafter. He had never received a written complaint, either for that work or for other tasks performed during 9 years of prior employment (J.A. 57, 59; Tr. 378). When he informed Knight of his discharge, Coker indicated that he had orders to discharge everybody that he caught not tying ends together. Yet when Knight suggested that he check the 15 or 20 other cans standing nearby, Coker replied, "to hell with that, I didn't catch them, I caught you" (J.A. 57; Tr. 376). Assistant overseer Bankhead testified that he could not recall ever having discharged an employee for not tying ends together (J.A. 59; Tr. 1706).

Frankie Couch and Elizabeth Hegler were the other two employees in the spinning room night shift whose union membership was posted on the bulletin board. They, however, went to see their supervisors, John Wood and Alvin Bankhead, and told them that they wanted to get out of the Union (J.A. 59; Tr. 424, 496, 469-470). On August 18, Hegler told Wood that she would like her name removed from the bul-

letin board because her job was more important to her than the Union (J.A. 59; Tr. 496). Wood asked if she had been attending union meetings, and she replied that she had attended one (J.A. 59; Tr. 496). Supervisor Bankhead continued to question her and asked if she had received a letter announcing the place of a union meeting and, if so, to bring him the letter (J.A. 59; Tr. 498-499). In addition, on three separate occasions Bankhead asked Hegler if a representative of the Board had interviewed her and if she had a copy of what he wrote down (J.A. 59; Tr. 499-501). Similarly, when employee Couch asked that her name be removed, Wood stated that she would have "to prove" to him that she was not for the Union (J.A. 59; Tr. 472). G.M. Mendenhall, superintendent of the spinning department, told Couch that he was pleased about her action, and added that he had tried to speak to another employee, James Lee, about the Union but that he was "all union and * * * said he always would be" (J.A. 60; Tr. 471). Mendenhall then prevailed upon Couch to talk to Lee on this subject, but Couch was unable to get Lee to withdraw from the Union (J.A. 60; Tr. 471). Neither Hegler nor Couch was discharged, but Lee was (J.A. 63-65; Tr. 506-508).

b. *The Whitmire Plant*

Donald Cudd was hired in 1949 and worked in the spinning department (J.A. 100; Tr. 2164). He joined the Union in the summer of 1963. Together with Fred Dough, a union organizer, Cudd called on other employees at their homes and asked local mer-

chants to help supply a union meeting place (J.A. 100; Tr. 2165-2170). Both Donald Cudd and his father, Jess (also a Company employee), were frequently visited at their home by Dough. General overseer D.W. Stone lived a few doors from the Cudds and on at least one occasion passed their house while they were talking to Dough in the front yard. Dough was known by both Stone and assistant overseer Clyde Taylor to be a representative of the Union (J.A. 100; Tr. 2166-2168, 2275-2276).

Before joining the Union, Cudd had never received a written reprimand (J.A. 101; Tr. 2170). On September 6, assistant overseer Taylor gave Cudd his first write-up, for not "piecing a doff" properly (J.A. 101; Tr. 2170). On September 26, Cudd received another write-up from Taylor, for piecing an end too high—an almost daily occurrence on every shift, for which no employee had ever before been discharged or written up (J.A. 101; Tr. 2172, 2175, 2179, 2196). On October 2, after finishing about two-thirds of his shift, Cudd was confronted by Taylor. Taylor showed Cudd four or five bobbins, allegedly from Cudd's frames, which had been pieced too high. Taylor thereupon summarily discharged him (J.A. 101; Tr. 2175-2176, 2249). At the Board hearing, Taylor conceded that he had seen the bad piecing on the frames about five hours before he spoke to Cudd and discharged him (J.A. 101; Tr. 2284-2285). Because of the processing that took place during the five-hour interval, it was impossible to determine whether the bobbins shown Cudd in

fact came from his frames (J.A. 101; Tr. 2176, 2284-2285).

Jess Cudd, Donald's father, had worked as a doffer in the spinning department in the Whitmire plant for 50 years. During his entire period of employment he had received a written reprimand only twice, once in 1948, and again in September 1963, for running short doffs (J.A. 101; Tr. 2194). On October 6, Jess and his son (who was continuing his union activity after his discharge) attended a union meeting, and on the following day they formally advised the Company by telegram of their union membership. They were the only two employees in the Whitmire plant to affiliate with the Union (J.A. 102; Tr. 2191-2192). On October 17, Jess received his third write-up in 50 years, because of poor "end piecing" (J.A. 102; Tr. 2197).

Shortly before Christmas, overseer Stone told Jess that his son, Donald, was passing out union literature in the neighborhood. Stone suggested that, if Jess were to adopt Donald's two children, he could receive $250 a month in public relief for their upkeep and could then quit his job at the plant; Stone pointed out that, by adding Jess's social security benefits to the relief money, Jess would receive almost as much as the Company was paying him now (JA. 102; Tr. 2204-2205). Although it had been the Company's practice at Christmas to give tickets exchangeable for fruit to families of employees with children (JA. 103; Tr. 2204-2205), this Christmas the Company skipped the Cudds. Jess asked Stone

for an explanation, and was told that if Jess would "run Donald * * * off, * * * and quit [himself] it'd be all right" (J.A. 103; Tr. 2205). Stone added that, if he did give Jess the fruit tickets, the Company would "run me off from here" (J.A. 103; Tr. 2206).

On January 2, 1964, when Jess came on duty on the first shift, he found that three frames that needed doffing had been left over from the previous shift. During the morning, Jess proceeded to doff two of these frames as well as six of his own. However, during the latter part of the shift, assistant overseer Taylor reminded Jess of the one frame from the previous shift which still remained undoffed. Jess maintained that he was "working just as hard" as he could, whereupon Taylor stated that the Company was not "going to stand for that" and summarily discharged him (J.A. 102; Tr. 2200, 2203).

c. *The Blackhawk Tufting Plant*

James Goodwin had been working in the warehouse for seven years and was a machine driver on an extractor, a machine which pulls bales of cotton out of a stack (JA. 122; Tr. 2889). He informed the Company of his union membership, and in late August the Company included his name on the union list posted in the plant (J.A. 122; Tr. 2880). A day or so later, superintendent Griffin told the assembled warehouse employees that the Company would take them back next season provided they "all use [their] head before [they] do anything wrong." Griffin added that he "was not talking about the union because

[he was] not allowed to say anything about that" (J. A. 122; Tr. 2890).

On Friday, August 26, foreman Ernest Hunter informed the employees working in the warehouse that those who had signed union cards were to report immediately to the office of the manager, Victor Kittles (JA 122; Tr. 2894-2895). Approximately 16 employees, including Goodwin, responded to this order. As the group entered the office, Kittles asked the employees "what was on their minds." One of the employees explained that Hunter had stated that Kittles wanted to see them (J.A. 122; Tr. 2895). Kittles denied making any such request, but added, "I thought maybe there was some question that you all wanted to ask me" (*ibid.*). One of the assembled union members replied that they had nothing to say (J.A. 122-123; Tr. 2896).

On the following Monday, when Goodwin reported to work, superintendent Griffin instructed all of the machine drivers to go to the warehouse shop and stand by their machines because some orders were about to come in (J.A. 123; Tr. 2900). While they were waiting for further instructions, Scuddy Hellem, a fellow employee, asked Goodwin to go with him to get some coffee and sandwiches at a nearby cafe. As the two employees went out, they were observed by foreman Hunter. When they returned in 6 or 7 minutes with the food and drinks, they passed by superintendent Griffin, who said nothing (J.A. 123; Tr. 2091-2093). About 30 to 45 minutes after their return, the work orders were ready and the employees began to fill them. At noon, how-

ever, superintendent Griffin informed Goodwin and Hellem that they were being discharged for leaving the mill without permission, in violation of a Company rule. Griffin told Goodwin to get off the Company's property as "fast as he could get to his car" (J.A. 123; Tr. 2920). The warehouse rule that employees must get permission from a supervisor before leaving the plant to get coffee had frequently been breached by employees, and, according to Griffin's own testimony, no employee prior to Goodwin had ever been discharged for breaking it (J.A. 123; Tr. 3291-3292, 3322).[6]

d. *The Watts Plant*

Forty-six employees at the Watts plant joined the Union. The Company was notified of their membership by a joint Union-employee telegram dated October 6, and by similar letters dated October 10 and 15 (J.A. 195; Tr. 7757, 7768, 7585, 7586). As in the other plants, the Company posted the names of

[6] About three or four days after Goodwin's discharge, foreman Hunter approached employee James Rosemond and suggested that he talk to manager Kittles about having his name taken off the posted list of union members (J.A. 124; Tr. 2965-2967, 2969). They were then joined by John Mansell, the other working foreman, and Rosemond was told that, "[if] enough of you go up there and take your names off, they will hire James Goodwin back" (J.A. 124; Tr. 2967). Moreover, superintendent Griffin told a group of employees in the warehouse that Goodwin had 6 or 7 years' seniority in the plant and he was trying to get his job back. Griffin added that, if the other employees in the warehouse who had joined the Union would come to him and "confess that [they were] wrong for joining this union," Goodwin would have a better chance of being reemployed (J.A. 124-125; Tr. 2987-2989).

union supporters on the plant bulletin board (J.A. 194; GCX 29). In the middle of the month, mimeographed slips addressed to Union Representative J.D. Good were circulated among the employees in the plant on Company time. The slips read as follows:

> Please remove my name as a member of the Union, as I want no part of it. A copy of this letter is being sent to the main office of the Watts Mills Plant (J.A. 194; Tr. 7623, GCX 30).

On about October 17, employee A.L. Hill was approached on the plant floor by several fellow employees, who gave him one of these slips to sign. Later that day, another employee, stating that the supply of slips had been exhausted, asked Hill if he would type some more (J.A. 194; Tr. 7614-7616). Hill agreed to do so, and, leaving his looms, he went to the weave room office where he proceeded to run off a number of slips on the Company's duplicating machine (J.A. 194-195; Tr. 7616-7618). While this was taking place, assistant overseer Harold King and superintendent Todd passed in and out of the office. As Hill was leaving the office to return to his loom, Todd remarked to another employee present that, although he (Todd) could have nothing to do with these activities, he was glad to see that they were taking place (J.A. 195; Tr. 7619-7620). A day or so later, general superintendent H. J. Hamrick approached Hill at his work area, shook his hand, and told Hill that he bore no hard feelings and "was glad" that Hill had withdrawn from the Union (J.A. 195; Tr. 7621-7622).

Within a few days after the dissemination of these withdrawal slips, 42 of the 46 employees whose names were posted as union members had notified the Company that they were leaving the Union (J.A. 195; Tr. 7757, 7768, 7778, 7782). The four employees who did not withdraw their membership were Ford Kennedy, Wilbur Burke, Clarence Poole, and M. C. Richardson (J.A. 195; Tr. 7782, 7668-7670, 7773, 7774, 8044). Kennedy left the plant at about this time because of a heart attack and was confined to a hospital for several months (J.A. 195; Tr. 7668, 7670, 8044); the record is unclear on what happened to Burke, but he was not in the Company's employ at the time of the Board hearing (J.A. 195). As set forth below, Poole and Richardson were discharged (J.A. 195; Tr. 7884-7885, 7732-7733).

Clarence Poole was a picker tender and doffer in the picker room (J.A. 196; Tr. 7671-7672). Poole's union membership was posted by the Company on October 7 (J.A. 196; Tr. 7673).[7] On October 15, assistant overseer James Bright issued Poole the first write-up he had ever received, allegedly for putting pieces of rayon which were too large into

[7] About a week later, supervisor Ernie Pennington approached employee James Merrill, who worked alongside Poole. After asking Merrill if he had joined the Union, Pennington told Merrill that the Company knew that Poole was trying to get all the carding and picker room employees to join the Union (J.A. 196; Tr. 7748-7749, 7751). The next day, general overseer Russell Lyons warned Poole and employee Thomas Chappell (also a posted union member) that the production on their shift was "off" (J.A. 196; Tr. 7675, 7711).

his machine (J.A. 197; Tr. 7673, 7855). Bright had never before issued a write-up for this common error (J.A. 197; Tr. 7855, 7859). Bright estimated that one piece of rayon from Poole's machine weighed about five pounds—four pounds over the permissible weight—but he did not weigh it. After Bright left, Poole weighed the piece of rayon and found that it weighed 14 ounces (J.A. 197; Tr. 7677).

On the following day, October 16, overseer Bright noticed that neither Poole nor fellow employee Thomas Chappell was at the machines (J.A. 197-198; Tr. 7869, 7873). Chappell returned about 10 minutes later (J.A. 198; Tr. 7873). When Poole returned after another 10 minutes, Bright asked him why he had left the machines unattended. Poole replied that Chappell was there when he left and that he told Chappell that he was going to the restroom (J.A. 198; Tr. 7875). Bright did not question Chappell, who had signed one of the union withdrawal slips (J.A. 196; Tr. 7782), nor did he otherwise attempt to determine who was responsible for leaving the machines unattended (J.A. 198; Tr. 7875-7876, 7877-7882). The next day, Bright told Poole that his production was inadequate and discharged him (J.A. 198; Tr. 7684). Bright testified that the discharge decision had been made when he told overseer Lyons that Poole had left his machine unattended (J.A. 198; Tr. 7703, 7884-7885, 7887). Bright conceded that Poole was the first employee he had discharged for "production purposes" (J.A. 198; Tr. 7890).

M. C. Richardson was a "blender tender" on the second shift. He brought bales of fabric to a hopper

he operated (J.A. 198; Tr. 7721-7722). The Company posted Richardson's union membership on the plant bulletin board on October 15 (J.A. 198-199; Tr. 7723). Later that day, Richardson was issued the first write-up in his employment history, allegedly for allowing his machine to run low on material (J.A. 199; Tr. 7726, 7727). On October 21, he was again written up, allegedly for the same reason and for not sweeping up properly around his machine (J.A. 199; Tr. 7728-7730). On November 15, he received another write-up, this time allegedly for putting oversized pieces of material into his machine (J.A. 199; Tr. 7734-7735). General overseer Lyons then reminded Richardson that he had once "promised to quit" if his work was not satisfactory (J.A. 199; Tr. 7731-7732). Again on November 26, Lyons reminded Richardson of this promise. Richardson replied that the Company would have to fire him if it wanted him out of the plant. Lyons promptly did so (J.A. 199; Tr. 7732-7733).

e. *The Rosemary Plant*

Charles Haithcock and *Lawrence Haithcock* were hired in November 1962 and July 1963 respectively (J.A. 214; Tr. 10174-10175). The two brothers worked in the harness room on the second shift, from 4 p.m. to midnight (J.A. 214; Tr. 10175). During their entire period of employment, they never received a write-up, nor were there any complaints about their work (J.A. 215; Tr. 10176, 10294, 10351). Both employees joined the Union,

and the Union so notified the Company on September 18 (J.A. 214; Tr. 9711, 10177).

On September 25, the Haithcocks did not bring their lunch with them, as they usually did. At the lunch break, they went to a restaurant across the street from the plant and brought back something to eat. The restaurant is commonly used by on-shift employees (J.A. 214; Tr. 10177-10179, 10182-10183, 10304, 10356). Although there was an unposted Company rule against leaving the plant during a shift without the permission of a supervisor, neither employee asked for permission since there was no supervisor on duty at the time. Overseer Alonzo Carver worked only the first shift and the leadman on the second shift, James Stafford, did not have the authority to grant such permission (J.A. 214; Tr. 10179, 10180). On this occasion, Stafford said nothing to the Haithcocks when he saw them leave, or when he saw them return with their lunches some 10 to 15 minutes later (J.A. 214; Tr. 10179-10181).

The next morning, overseer Carver told Stafford that he had driven to the plant the preceding evening in his off-hours and had stationed himself in the parking lot for the specific purpose of watching the two employees, and had seen the Haithcocks leave the plant (J.A. 215; Tr. 10287, 10290, 10317-10318). As Stafford testified without contradiction, Carver had been coming back to the plant for several days, at about lunch-break time, to check on the Haithcocks (J.A. 215; Tr. 10298). When the Haithcocks reported for work the following afternoon, September 26, supervisor Paul King told them that, since

they had violated a plant rule against leaving the plant during a lunch break without permission, they were being discharged (J.A. 215; Tr. 10181, 10187).

B. The Decisions of the Board and the Court of Appeals

The Board found that the Company, in violation of Section 8(a)(1) and (3) of the Act, discharged 71 employees and denied overtime work to two others because of their union activities (Pet. App. 40a, 45a-50a, 57a, 65a; J.A. 262, 267).[8] In addition, the Board found that the Company committed independent violations of Section 8(a)(1) of the Act by threats of reprisals, promises of benefits, coercive interrogation of employees concerning union activity, and surveillance of such activity; by mailing to its employees, and posting on its bulletin boards, a notice which in effect threatened the employees with harm for engaging in union activities; and by posting the names of union adherents on plant bulletin boards and then deleting their names as they recanted their union membership (Pet. App. 41a-45a).[9]

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[8] The Board found that two of the employees were also discriminated against because of testimony which they had given in a Board proceeding, so that the Company also violated Section 8(a)(4) of the Act (Pet. App. 45a, n. 5, 48a).

[9] The Board found that a preponderance of the evidence did not establish that the Company had violated the Act by its discharge of eight other employees, and dismissed the complaint as to these employees (Pet. App. 57a-58a). The Union sought review of the Board's action with respect to six of these employees, and the court of appeals sustained the Board's findings as to them (Pet. App. 3a, 18a-19a).

The Board ordered the Company to cease and desist from these unfair labor practices, to reinstate with back-pay the employees discriminated against, and to post appropriate notices (Pet App. 58a-61a). The Board, however, concluded that these conventional remedies would not alone be "completely adequate to undo the effect of the massive and deliberate unfair labor practices committed by [the Company] in its successful efforts to frustrate organization by its employees" (Pet App. 55a-56a). Accordingly, the Board further ordered the Company to mail a copy of the Board's remedial notice to all of its employees at all 43 of the Company's plants in North and South Carolina; to post copies of the notice on the bulletin boards of all of these plants; to read the notice to all of the employees at these plants; and to give the Union, upon request, access to bulletin boards and other places where notices to employees are customarily posted, for a period of one year (Pet. App. 55a-57a).

The court of appeals held that the evidence "overwhelmingly supports the Board," and accordingly upheld all of the Board's findings of Section 8 (a) (1), (3) and (4) violations (Pet. App. 18a-19a). As to the Board's order, the court of appeals found appropriate the provisions which required the Company to cease and desist from the unfair labor practices found, to reinstate with back-pay the discriminatees, to post the notices in all of its 43 plants, and to mail a copy of the notice to each of its employees at these 43 plants (Pet. App. 21a-24a). The court, however, granted enforcement of the reading require-

ment only at the 20 plants where the unfair labor practices occurred and required the Board to afford the Company, at its option, the alternative of having the notice read by a Board representative, rather than by its own officials (Pet. App. 24a-26a).[10]

ARGUMENT

1. Petitioner's contention (Pet. 35-137) that the court of appeals erred in affirming the Board's findings that the discharges of the 71 employees and the denial of overtime work to two employees were discriminatorily motivated raises only an evidentiary issue which does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491; *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503. In any event, the evidence carefully considered by the Board so overwhelmingly supports its findings that, as the court below stated, "[t]here can be no room for doubt of the Board's ultimate conclusion" of unlawful motivation (Pet. App. 17a). Similarly, petitioner's wholesale condemnation of the Board's determination of relative credibility raises no issue of substance. Contrary to petitioner's allegation (Pet. 36-37), it is hardly indicative of bias and prejudice that the resolution of conflicting testimony was largely adverse to the charged party. *Na-*

[10] The court of appeals also declined to enforce the portion of the Board's order requiring the Company to make its bulletin boards available to the Union (Pet. App. 26a-27a). The Board has not cross-petitioned to seek review of the court's modification of its order.

tional Labor Relations Board v. *Pittsburgh Steamship Co.*, 337 U.S. 656, 659-660.[11] The summary of the evidence on some of the discharges, set out above, illustrates the soundness of the decision of the court below that the Board's findings had more than substantial basis in the record, and it demonstrates why it is wholly unnecessary for this Court to conduct a further canvass of the 11,000 page transcript.

2. Nor is there merit to petitioner's claim (Pet. 29-35) that the court below erred in sustaining the Board's conclusion that the Company violated Section 8(a)(1) of the Act by mailing to its employees and posting on its bulletin boards a notice warning that the advent of the Union would "operate to your serious harm" (*supra*, pp. 3-4). In the context of the Company's coercive campaign to snuff out the Union—including 73 individual violations of Section 8(a)(3), two violations of Section 8(a)(4), and some 45 independent violations of Section 8(a)(1)—there is ample support in the record for the Board's finding (Pet. App. 44a-45a) that the Company's warning of "serious harm" itself constituted a threat within the meaning of Section 8(a)(1) of the Act.

Although other courts have held similar notices to be noncoercive (see Pet. 31-33), there is no true conflict of decisions, for those cases are distinguish-

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[11] Petitioner's contention significantly ignores the fact that the Board dismissed the complaint insofar as it alleged that the discharges of eight other employees were discriminatory (Pet. 57a-58a). As the court below noted, the Board's action in this respect implies that it accepted petitioner's stated reason for these discharges (Pet. App. 16a-17a).

able from the situation here. As the Court of Appeals for the District of Columbia Circuit pointed out in *Amalgamated Clothing Workers* v. *National Labor Relations Board*, 365 F. 2d 898, 910: "The notice may take a different coloration by virtue of the accompanying circumstances." In none of the earlier cases was the notice issued in the context of other unfair labor practices as massive and deliberate as those committed by the Company here.[12] And, it was on this limited ground, *i.e.*, in "the 'particular setting' in this case", that the court below sustained the Board's finding (Pet. App. 21a), while agreeing that in a less hostile milieu the notice might not be found coercive.

3. Finally, no issue warranting review is presented by the provisions of the Board's order, as modified and enforced by the court of appeals, requiring the posting, mailing, and reading of the Board's remedial notice. Section 10(c) of the Act authorizes

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[12] See, *e.g.*, *Wellington Mill Div., West Point Mfg. Co.* v. *National Labor Relations Board*, 330 F. 2d 579, 583 (C.A. 4) (court found only one other violation of Section 8(a)(1)); *National Labor Relations Board* v. *Lyman Printing Co.*, 356 F. 2d 844, 846 (C.A. 4) (no finding of any other violations of the Act); *National Labor Relations Board* v. *Threads, Inc.*, 308 F. 2d 1, 8-9 (C.A. 4) (two violations of Section 8(a)(1), and one violation of Section 8(a)(3)); *Surprenant Mfg. Co.* v. *National Labor Relations Board*, 341 F. 2d 756, 758-760 (C.A. 6) (two other Section 8(a)(1) violations). Cf. *National Labor Relations Board* v. *Southwire Co.*, 352 F. 2d 346, 347-348 (C.A. 5) (court found that language concerning "serious harm" to employees was "wisely" changed in later company notices, and concluded that "[u]nder these circumstances" the second notices were not violative of the Act).

the Board, upon finding an unfair labor practice, to require the employer "to take such affirmative action * * * as will effectuate the policies of this Act." As this Court recently observed in *Fibreboard Paper Products Corp.* v. *National Labor Relations Board*, 379 U.S. 203, this section charges the Board with the task of devising appropriate remedies, a matter of peculiar administrative competence, and for this reason the "Board's power is a broad discretionary one, subject to limited judicial review." 379 U.S. at 216. Contrary to petitioner's assertions (Pet. 11-29), the remedies enforced by the court of appeals, tailored to the special facts of this case, are well within the broad power conferred by Section 10(c).

a. As the court below pointed out (Pet. App. 23a), the requirement that the Company post the notice in all of its 43 North and South Carolina plants is plainly appropriate in this case:

> Flagrant violations occurred at each of the twenty plants involved in this proceeding where organization campaigns were instituted. The area is geographically limited and contiguous; the evidence shows that the Company's policies were not determined at individual plant levels alone. That being so, including the other twenty-three Carolina plants in the order was justified "since there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies" throughout the region. [Citing cases.]

The requirement that the Company also mail the notice to the employees in these 43 plants is equally

proper here. As the court of appeals added (Pet. App. 24a):

> At the outset of the Union campaign, the Company posted its own Notice * * * on the bulletin boards in the plants involved in this case. But the Company obviously thought that mere posting would not be sufficient to drive home its point, because in addition it mailed a copy to each employee in the plants. The Board's notice is entitled to the same circulation for the same reasons * * *.

The Company is hardly in a position to urge that it was improper for the Board to share the Company's view that merely posting notices on plant bulletin boards would not be effective in disseminating the information contained.

b. In view of the flagrant and pervasive unfair labor practices that the Company engaged in, it was also permissible for the Board to conclude that, in order to eradicate the lingering coercive impact of those illegal practices, it was also necessary for the employees to receive oral assurances on their jobsites that the Company would respect their organizational rights. Despite petitioner's characterization (Pet. 11-13), this reading requirement is not tantamount to a "confession of guilt." The notice to be read (Pet. App. 63a-64a) speaks prospectively, and merely advises the employees that the Company will not engage in certain specified conduct that it is legally enjoined from engaging in. It does not assert that the Company has engaged in unlawful conduct in the past, nor does it recite the cease and desist pro-

visions of the Board's order.[13] In any event, the court below modified the reading requirement so as to afford the Company the option of having the notice read by a Board representative instead of by its own officials.[14] The court explained that "[t]his alternative eliminates the necessity of participation by the Company, if it so desires, and still guarantees effective communication of the Board's order to the Company's employees" (Pet. App. 26a).

Nor is review of the reading requirement in this case warranted because the Courts of Appeals for the Fifth and District of Columbia Circuits have denied enforcement of reading requirements. See *National Labor Relations Board* v. *Laney & Duke Storage Co.*, 369 F. 2d 859, 869 (C.A. 5); *Int'l Union of Electrical Workers* v. *National Labor Relations Board (Scott's, Inc.)*, 66 LRRM 2081, 2082-2083 (C.A. D.C., Wright J., dissenting), decided September 6, 1967. Those decisions, like the instant case, turned on the particular circumstances involved. The unfair labor practices in *Laney & Duke* were not as extensive and aggravated as those here.[15]

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[13] See *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 438-439. The language from the notice in *Harry F. Berggren & Sons*, 165 NLRB No. 52, relied on by petitioner (Pet. 9, 12), was subsequently modified by the Board to delete any reference to past unlawful acts (unreported order entered September 28, 1967).

[14] The Court also limited the reading requirement to the 20 plants where the unfair labor practices occurred.

[15] In *Gotham Industries Inc.*, 167 NLRB No. 91, 66 LRRM 1127, October 2, 1967, upon finding that the respondents'

While the situation was somewhat more severe in *Scott's*, the court, while declining to sanction a reading requirement there, acknowledged "that some conduct on the part of an employer or a union might reach such extreme dimensions as to justify the novel and drastic step of requiring the offending party to stand up before the employees and read the Board's notice publicly" (66 LRRM at 2083). The instant case is such a situation, and thus the cases are, in fact, consistent.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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prior unfair labor practices were not so aggravated as to warrant unusual remedial action, the Board declined to impose a reading requirement.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * *

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

* * * *

Sec. 10 (c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

* * * * *

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